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SHORE PROTECTION ACT OF 1987

JOINT HEARING

BEFORE THE

SUBCOMMITTEES ON
ENVIRONMENTAL PROTECTION

AND

HAZARDOUS WASTES AND TOXIC SUBSTANCES

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1751

A BILL TO REQUIRE VESSELS TO MANIFEST THE TRANSPORT OF MUNICIPAL OR OTHER NONHAZARDOUS COMMERCIAL WASTES TRANSPORTED OFFSHORE TO ENSURE THAT THESE WASTES ARE NOT ILLEGALLY DISPOSED OF AT SEA

NOVEMBER 4, 1987

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SHORE PROTECTION ACT OF 1987

WEDNESDAY, NOVEMBER 4, 1987

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, SUBCOMMITTEES ON ENVIRONMENTAL PROTECTION AND HAZARDOUS WASTES AND TOXIC SUBSTANCES,
Washington, DC.

The subcommittees met, pursuant to notice, at 2:12 p.m., in room 406, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the Subcommittee on Hazardous Wastes and Toxic Substances) presiding.

Present: Senators Baucus, Lautenberg, Durenberger, and Pressler.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The subcommittee will come to order. It is an honor for the subcommittee to commence a hearing today on a certain portion and form of hazardous waste, namely the trash that washes up on our Nation's shores.

We are also very fortunate, too, to have the foresight and the ability of the two New Jersey Senators, Senator Lautenberg, a member of this committee, and Senator Bradley, who is not a member of this committee, but who is just as interested in these issues as Senator Lautenberg.

This hearing is being held at the request of Senator Lautenberg. Senator Lautenberg approached the Chair of this subcommittee suggesting this would be an appropriate opportunity to consider resolution of the issue, and the Chair, upon advisement, felt that Senator Lautenberg of New Jersey had a very meritorious point of view, and we are very fortunate to be able to have a hearing on this bill.

At this point I'll turn the hearing over to Senator Lautenberg, who is a very forceful advocate of protecting our Nation's environment. I will stay here for a portion of the hearing, but Senator Lautenberg will conduct the hearing.

[Senator Baucus' statement follows:]

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

The problem of dealing with this nation's waste is one that must be confronted on every front.

The subject of today's hearing is to address the problem of trash washing up on the nation's shores. The problem of managing our nation's solid waste is one that will take new initiatives at both the State and Federal level.

Currently, the Federal role in managing municipal waste is largely advisory. The Resource Conservation and Recovery Act provides a framework for coordinated waste management.

Trash has traditionally been considered a local issue. As the public becomes increasingly concerned over the environmental problems caused by trash disposal, communities are forced to look further and further for trash disposal alternatives.

One of the consequences of a growing "NIMBY" Not-in-my-backyard-syndrome has been an increase in the hauling of garbage on barges. Occasionally, this garbage is washed into the sea, ultimately coming to rest on some shoreline.

To the shorelines defaced by human waste, this is a travesty.

The problem of shoreline pollution by trash is a symptom of a larger problem. Trash is no longer a local issue. It has become a Federal issue.

Senator Lautenberg's legislation addressing shoreline trash pollution is an important aspect of the larger solid waste management issues confronting this nation. Senator Lautenberg has been a leader in looking for ways to address this nation's waste problems. He is an asset to the State of New Jersey. New Jersey has some of the most serious solid waste disposal problems facing the nation. I expect that we as a nation can learn a great deal from the way New Jersey addresses its solid waste problems.

The Hazardous Waste and Toxic Substances Subcommittee has held four hearings dealing with the Resource Conservation and Recovery Act. Two of those hearings specifically addressed municipal waste. Today's hearing will continue to explore RCRA solid waste issues. I plan to hold at least one more RCRA solid waste hearing during this first session of the 100th Congress.

The Resource Conservation and Recovery Act must be reauthorized next year. It is my intention to devote much of this Committee's attention next year to addressing the problem posed by this nation's solid waste. I commend Senator Lautenberg for his interest in this important environmental area and I look forward to addressing the problem of shoreline trash as we develop legislation reauthorizing RCRA.

It is my intention to stay as long as I can today to learn about the issues surrounding shoreline trash. When I do need to leave due to a prior commitment, I will ask Senator Lautenberg to chair the hearing. I want to assure each of you testifying today that I plan to review the hearing record very carefully and that I plan to work with Senator Lautenberg to address this important problem when we reauthorize RCRA next year.

Senator BAUCUS. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman. I appreciate your willingness to hold this hearing. It is very important, and it is a matter of imminent concern, as well, because New Jersey has had serious problems with its beach and ocean pollution. Though I know Montana doesn't have much of a problem with ocean pollution, the fact is, Mr. Chairman, I know that your interest in a clean environment is a long-standing one, and I've enjoyed our work together on behalf of achieving that.

I'm pleased to chair this hearing, and I would ask my distinguished senior colleague, Senator Bradley, whose record on environmental matters is one of some long-standing—in 1980 Senator Bradley, I would have to say, was a principal advocate of establishing the Superfund law, the law that is now on the books that enables us to clean up toxic waste sites that dot our national landscape, as well as in the State of New Jersey.

Senator Bradley's interest comes naturally because the State of New Jersey, the most densely populated state in the union, with an enormous coastline relative to its land mass, and, of course, great problems in finding ways to deal with trash, toxic waste, ocean pollution, you name it; Senator Bill Bradley, though not a member of the Environment Committee, as you indicated, has always had the environment high on his agenda.

Senator Bradley, I would ask you how tight the rest of your afternoon's agenda is, because if you're in a big rush we'll hear your statement before you hear mine, and you'll undoubtedly miss out, but you'll have a chance to read the transcript.

Senator **Bradley**. Mr. Chairman, I would much rather hear yours than the distinguished chairman of the subcommittee's testimony on the inland sea, which is, of course, under much of Montana.

Senator **Lautenberg**. How's your schedule?

Senator **Bradley**. Mr. Chairman, if you'd like, I'd be prepared to go ahead or wait for you, whatever you'd——

Senator **Lautenberg**. Well, just to kind of get an order of things, I've got probably five or six minutes, and I know that you've got a busy agenda, so since you're going to present us with a reconciliation bill and balanced budget, I'd like you to get on with that task please, Mr. Bradley.

Senator **Bradley**. Okay.

STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator **Bradley**. Thank you very much, Mr. Chairman. I am very pleased to be here today to give my strong support to the Shore Protection Act of 1987, which I am proud to cosponsor with you as the lead sponsor of this bill.

Both of us witnessed the terrible spectacle of garbage—including hospital waste—washing up on our shores and closing our beaches during last summer. This was an assault on one of New Jersey's most precious assets, and it simply can't be tolerated. We have to take whatever action is necessary to protect that valuable shore.

For that reason, I am pleased that S. 1751, the Shore Protection Act, has received such prompt consideration by this committee, and I hope that our colleagues will follow your example and give the legislation swift attention. Anyone who was at the Jersey shore last summer and witnessed the garbage washing up on that shore could understand the sense of urgency that both of us feel about this and that you've demonstrated through introducing this bill.

The Shore Protection Act will help protect our beaches by making it easier to keep track of garbage transported over water and to punish those who illegally dump garbage. I think that it, indeed, is a singularly important initiative, and I think you are to be congratulated for your vigorous pursuit of this action in responding to a problem that you saw last summer, that I saw last summer, and to which the people of New Jersey have cried out for an answer.

We also have to take other steps to try to preserve our shoreline and our marine environment. I hope the Senate will ratify Annex 5 of the International Convention on the Prevention of Pollution from Ships, known as MARPOL, within the next few days. As soon thereafter as possible, we should follow your leadership, Mr. Chairman, and adopt your legislation to implement this treaty. I think that would be very important, and is another example of your continuing concern for the marine environment and the New Jersey shore. We simply have to curb the blight of plastic pollution, and I applaud your efforts to make sure that we do this.

At the same time, I hope EPA will lose no time in implementing a system by which hospital waste would be tracked from cradle to grave. I believe we may be able to use sophisticated satellite technology to track and catch those who illegally dump waste into our oceans. The current state of technology is certainly promising enough to warrant an interagency task force to determine the possibilities of the use of satellites to track illegal dumpers.

Twenty-eight colleagues who represent coastal States have endorsed these proposals, and with their help both steps could become a reality.

Mr. Chairman, I would also like to take this occasion, if I could, to reemphasize once more—A I did in very specific examples with regard to MARPOL and to S. 1751—your commitment and leadership on environmental issues generally. You've been relentless in your effort to protect the environment in New Jersey and throughout the country. Superfund II bears the deep imprint of Senator Lautenberg, and it's enormously pleasing and reassuring for me, as I know it is for the millions of citizens in our State who are concerned about the environment, to know that you're fighting to protect it.

I think, frankly, the Shore Protection Act represents just another one of those important actions. I'm very happy to be here today to lend my strong support to it, and to commend you for your continuing efforts to protect the environment in New Jersey and across the country.

Senator LAUTENBERG. Thank you very much, Senator Bradley. Thank you for your interest in the environment, and thank you for the nice comments. I do appreciate that. You and I share that interest together, whether it's in New Jersey's parkland, its rivers—remembering not to long ago that we had an outstanding opportunity to participate in the designation of a couple of magnificent rivers. Mr. Chairman, perhaps it's hard coming from a State with the natural beauty and the grandeur that Montana has to imagine that in our busy little State we have pockets of isolation of natural beauty that are truly remarkable.

There are two rivers that Senator Bradley and I worked together to designate as forever scenic and wild rivers, and they are pristine. There are still eagles there, and the heron, and things of that nature. It's very, very important in a State like ours that we preserve these pockets of tranquility and beauty. So we've had a good time working together on these things, and I thank Senator Bradley for being with us.

Do you have anything, Mr. Chairman?

Senator BAUCUS. I want to thank the Senator for his testimony, and also follow up on a point which he made, namely how strong an advocate you've been for the protection of our Nation's environment. I've been very impressed, as a member of this committee, with the degree of intensity, perception, dedication, and aggressive nature with which you have worked to preserve not only the environment of the State of New Jersey, but our Nation as a whole. I'm hard-pressed, frankly, to think of anyone else in this committee who has worked as assiduously and as aggressively as have you, Mr. Chairman. I just think that those in this room, those who are interested, should know that. You are to be very, very highly commended for all your work. This bill, frankly, is just another example of that effort.

Senator LAUTENBERG. Thank you, Senator Baucus. You had the scheduling decision to make, as well as the agenda decision to make. Permit us, Bill, to move this thing so very quickly. We are grateful for your assistance.

Senator BRADLEY. Well, Mr. Chairman, I'd like to thank Senator Baucus, as well, because this bill is of great importance to the people of New Jersey, and I think to all coastal States. So I appreciate the opportunity to be here. I know you're gong to have some excellent witnesses from the Jersey shore, and I think they can probably describe in very vivid detail not only what we witnessed, but for those who weren't on the Jersey shore last summer, detail for them of the circumstances that this bill is aimed to try to correct.

Senator BAUCUS. I might just ask one question, Mr. Chairman. What is the nature of most of the trash and the waste that washes up on the New Jersey shore?

Senator BRADLEY. Well, the nature of it is many different kinds. It's garbage. I think one of the most revolting aspects of last summer was the washing up of hospital waste: syringes, used bottles, things that should have been deposited in a landfill somewhere, but were not, but instead were dumped in the ocean. I think that this bill is aimed at trying to correct the problem of illegal garbage dumping, and I think that it does so very effectively with the permit system. I know that Senator Lautenberg will get into that. I know you've looked at it, Mr. Chairman, and I think that this bill and the hospital waste initiative combined, really address the problem of what we saw washing up on our shores last summer.

Senator BAUCUS. I appreciate that. As a personal anecdote that probably doesn't mean much: about 20 years ago I was on a sailboat sailing from Hawaii to California—a 40-foot boat—and I was astounded at the junk in the ocean. That's the Pacific Ocean 20 years ago, and it must be worse. Although I've not been on the New Jersey shores in the last several years, I just have a sense of what you're facing. I think that most of us on this committee understand what you're facing and want to do something about it. I think this is a good step in that direction.

Thank you.

Senator LAUTENBERG. Thank you very much, Senator Bradley.

We are pleased, again, to have had the blessing of Senator Baucus in holding this hearing. I thank my two house colleagues from the State of New Jersey, as well, and I will take the liberty of making an opening statement which I passed because I had the assurance, for your edification, that Senator Bradley was going to go ahead and settle the budget deficit this afternoon, so I thought we ought not to keep him here. We ought to get on with that.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. But I will take a minute now to make my statement and to extend my appreciation to Senator Mitchell and to Senator Baucus for allowing us to proceed so quickly with this hearing on the Shore Protection Act of 1987 that I have written. This legislation happens to fall within the province of these two subcommittees, and we needed the acquiescence and the support of each of the chairmen to hold the hearing and to move it as quickly as we did, and I'm grateful to each one of them for it.

This summer New Jersey's beaches were plagued by a tide of garbage and debris. Many summer vacations were ruined, and lots of dollars lost as rubber tires, plastic bags, syringes, bottles, and other assorted debris washed ashore. Thirty to fifty mile stretches of beach were closed for 7 days this summer, and all of us are sick and tired of it.

Some of that debris included medical wastes that could potentially pose a health threat, and it's got to stop.

Today there is no law which requires the tracking of any of the wastes that washed up on New Jersey's shores and, unfortunately, enforcement of the laws we do have have been slipshod, at best. It's all too clear that many people still regard the oceans as an easy and cheap dumping ground, the ultimate garbage dump.

There is growing pressure on land disposal resources, and that's only likely to compound the problem. As disposal costs climb, so do the incentives to use the oceans for dumping.

We've got to act now to protect our shores, and that's why I introduced this bill, the Shore Protection Act. The purpose of it is pretty simple, to provide the valuable shoreline of this country from continued degradation as much as we can. It's true that we do have laws to prevent dumping and to protect our oceans, but they're not well enforced. The Shore Protection Act is intended to make sure that they are. It sets up an enforcement system so you don't have an unknown barge carrying an unknown cargo to an unknown designation.

The bill establishes a tracking system to tell us how much waste is picked up, how much is delivered, and where it is either delivered or dropped off. It also requires vessel operators and facility owners to adopt safe handling practices. There is no excuse for the sloppiness that spills garbage in water during loading, unloading, and transport. We must take steps that safeguard our resources against irresponsible disposal of all wastes, whether they be municipal, medical, or hazardous.

We can't guarantee compliance with these laws, but we sure can make it difficult to violate them and easier to catch those who do, and we need to have penalties that deter abuses.

I know there are those who doubt the need for Federal legislation, but are they aware of the tides of garbage that washed ashore in New Jersey this summer? Are they aware of the thousands of people whose summer vacations were either ruined or interrupted? Do they know about the business-people who watch their revenues decline as beaches shut down? Can they be aware of the many people now reconsidering their decision to purchase shore property? And are they aware that there are many New Jersey physicians who are concerned about the potential health threat posed by the washed-ashore debris?

By 1990, some 70 percent of our Nation's population is likely to live within 50 miles of a coastline. There is no question that pressure on our coastal resources will continue to grow; at the same time, our disposal capacity continues to diminish.

The bill we're looking at today is carefully crafted to address a very specific kind of problem that may occur along any one of our Nation's shorelines. Some people think this is only a local New Jersey problem, but more than 670 tons of debris were collected from the beaches in 15 States in a single week. That's according to information collected by the Center for Environmental Education. Only 40 of those 670 tons—less than 6 percent—came onto New Jersey shores.

Let me warn each of you that without this legislation—and this is not to my colleagues, they know the problem—this is a problem that will become painfully familiar to many more people.

I look forward to hearing our witnesses. I know that some of them won't agree with me, but I know of no one who lives along the New Jersey shore that will stand for less than swift action. I hope that we'll learn more about the problem today and ways that we might address it.

I want the problem solved. I know that you want it solved. I'd like it solved before another New Jersey summer is ruined. I'm willing to look at other options, but I'm not willing to sit on the sidelines and watch another debris-filled summer pass by.

I'd like to welcome Congressman Hughes and Congressman Saxton to this hearing. They each share my concern about this serious problem and are as anxious as I am to move swiftly to try to ensure cleaner beaches next summer. You've been actively seeking measures that will help to ensure cleaner beaches and oceans, and I applaud those efforts. I thank you both for coming.

I've had occasion to work with each of you, but in particular with Congressman Hughes on many of our environmental problems, and we share a common objective, and that's to make certain that as long as we have the ability to make a difference in the way our shores and our natural resources are treated we're going to fight that battle. I've enjoyed working with you, Bill, and, of course, Jim as well on those occasions where our paths cross on a particular matter. I look forward to your testimony. Since Congressman Hughes is senior in service—of course not senior in age, but senior in service—I would ask Congressman Hughes for his testimony first.

STATEMENT OF HON. WILLIAM J. HUGHES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. **Hughes**. Mr. Chairman, as of two weeks ago as I drive down the interstate and see 55 miles an hour it reminds me of my age these days, having just turned 55.

Senator **Lautenberg**. You've survived better than our turnpikes have, I can tell you that.

Mr. **Hughes**. I want to thank you, Mr. Chairman, for first of all offering and sponsoring on the Senate side S. 1751, with our colleague Bill Bradley, the senior senator from New Jersey. It is an important piece of legislation, and it is my privilege to have joined with my colleague, Jim Saxton, in offering a companion measure on the House side. It is an important measure, as I've indicated, and I look forward to working with you on this and some of the other matters that affect our environment, and particularly our oceans.

In the years before my colleague arrived, I worked very closely with our late colleague, Ed Forsythe, a great member of the House Merchant Marine and Fisheries Committee. I enjoy this same type of bipartisan relationship with our colleague Jim Saxton, and we look forward to working with you on this particular legislation and many other pieces of legislation. We want to address what I think is the number one concern of my congressional district, the second district in New Jersey, and that is ocean pollution of all kinds.

I've often said jokingly that I've put four kids through college on ocean dumping alone. That's true. I've worked on the ocean dumping issue for some 13 years I've been in Congress and, unfortunately, we still have an attitude of "out of sight, out of mind," that has prevailed for so many years. The ocean doesn't have very much of a constituency. Unfortunately, the fish and mammals can't vote.

When we can't think of what else to do with our debris we dump it in the ocean where we'd otherwise bury it. That's no longer acceptable.

Today we're addressing one particular component of what I hope will be an overall strategy to deal with ocean pollution of all kinds. The cause of ocean pollution, as you well know as one of the leaders in the Senate on this issue, is many-fold. There is no one single cause of our problems along the eastern seaboard and other places around this country and around the world: storm sewer overflow, the dumping of sewage sludge and chemicals at the 106-mile dump site, and we still dump raw sewage into parts of our waterways. All contribute to our pollution problem.

Not the least of the contributors, however, are people that throw debris overboard from vessels. We hope to be able to address that in legislation that just moved through the House dealing with throwing plastics, crates, and other debris off merchant vessels. This would enable us to deal with another particular problem that causes New Jersey special concern, and that is the dumping of garbage and refuse of all kinds inadvertently and intentionally.

It makes abundant good sense to develop a tracking system. That's what this legislation would do. It also would increase the penalties for those that intentionally dump garbage and non-toxic trash of all kinds. It also provides a manifest system to enable us to track that from the generator to the disposal, identifying the vessels that are transporting that material, indicating to the regulators what the volume is, and to make sure that what is taken from generators, in fact ends up at the proper disposal site.

It will put in place, a regulatory scheme that is essential if we are to deal with the illicit dumpers, as well as those that are inadvertently dumping.

It doesn't make sense for us to permit people to dump tons and tons of trash and debris that ends up not just degrading the ocean environment, but despoils our economy.

This past summer was an absolute disaster for my region. Tourism—and my colleague from New Jersey is going to talk about the tourism industry in addition—is a major mainstay of our economy. It's the second-largest industry in New Jersey, as you know. Now with the advent of casino gaming in Atlantic City, Atlantic City has become the number one destination resort in the entire country.

We depend upon clean air, clean water, and sandy beaches. When we have 20-mile slicks of garbage and toxic substances of all kinds, hospital wastes, all kinds of plastic materials, bottles, and other debris it just despoils our beaches and drastically affects our economy.

In the last two weeks of this season—and you know we depend upon a three-week season along our coast and our seashore communities—reservations fell off by more than 50 percent, and it was directly caused by all the bad ink we took and television stations describing the death of the dolphins, the trash and the garbage, and the other things washing up on our beaches. It was a direct result of that bad publicity.

Just about three weeks ago I walked along a two-block stretch in my home city of Ocean City, New Jersey, and I'll bet there was at least 100 soda cans and bottles and beer cans and bottles strewn along that beach in a two-block area. I took a photograph of it. I couldn't believe just how unsightly it was.

So we do have a major problem, Mr. Chairman, and your legislation, legislation that we're privileged to join with you on in the House side, will address that particular aspect of the problem. We look forward to working with you on a number of other components of a comprehensive strategy that we need to put in place before next year to reassure our constituents that, in fact, we're serious about dealing with the illegal dumpers and the careless dumpers, and this is a major first step in that direction.

Thank you.

Senator **Lautenberg**. Thank you very much, Congressman Hughes. The picture you paint is, unfortunately, not a very pretty one. Those of us who have been in New Jersey ~~for~~ such a long period see what's happened with that beautiful coastline of ours. That was the richest natural resource that we had, and I heard people whom I met walking along the boards or along the beaches saying, "This is the first summer since I moved down here from the northern part of the State, since I moved here from Philadelphia, I didn't go in the water, I didn't use the beach," and to have boardwalk merchants tell me that revenues were off.

I think, Bill, you know that the weather, on a comparative basis this year to last, was almost identical in terms of sunny days and good weather availability, so it was no problem with the weather. Traffic was as usual, always bad, but people are willing to put up with an inconvenience in travelling if, when you finally get to your destination, you know that you and your family can have a good time and be free of concerns.

I appreciate your testimony.

Congressman Saxton.

STATEMENT OF HON. H. JAMES SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. **Saxton**. Senator Lautenberg, I'd like to thank and commend you very sincerely, sir, for having the foresight to move this legislation so quickly. I am sure that you, as my colleague Bill Hughes and I know, and as a matter of fact deal with on a daily basis back home, the seriousness of this situation.

I think it's appropriate to point out that today is a very important day in terms of moving this legislation. I think it's also important to point out that it is one important step in a series of moves by the Federal Government in conjunction with the State government to deal with the multi-faceted problem which must have multi-faceted solutions.

These things have to do with sludge dumping in the ocean; they have to do with non-point pollution, which is going to be, perhaps, one of the most difficult tasks to come to grips with and to deal with; they have to do with sewage effluent that runs into our tributaries and our bays and streams and directly into the ocean; and they have to do with chemicals being dumped in the ocean, as you well know. I know I'm not telling you anything new. I know that you are very much aware of that.

Now to come to what we are really here to deal with today. I was shocked on August 13th to be in Philadelphia and get an emergency call from one of the mayors from my district asking me to come to the seashore to see what was going on. An hour later I was at the seashore, and I found all up and down Long Beach Island, which is the major portion of the seashore which I represent, timbers and rotten wood and medical waste. Waste such as used syringes, and other items that have to do with medical waste had washed ashore.

I was shocked to find it there. I was even more shocked the next day to hear of a young boy who had a syringe embedded in his hand while he was swimming in the surf. But Senator, and my colleague from New Jersey, Mr. Hughes, I was even more shocked to find out that our Federal Government doesn't have a way to track that type of waste to determine its source of origin, its final destination, and the normal course of disposing of it. So I commend you, Senator Lautenberg, for having the foresight to draft this bill and to move it along as quickly as you can.

Both you, Senator, and Mr. Hughes have indicated that it is important to do this quickly.

Let me just diverge from my testimony for just a moment to amplify on why I think that's so important. My district, the 13th district, which runs from the Delaware River to the Atlantic Ocean, is very diverse. It has agriculture in it, it has suburban Philadelphia, it has the county seat of Burlington County and the county seat of Ocean County, which are big employers, and it has Fort Dix and McGuire Air Force Base. But, I believe that without question the number one industry, the number one job producer in my district is tourism, and the seashore is obviously where all of that tourism takes place.

As Congressman Hughes indicated, the reservations for next year already are falling off. I believe—and it's my firm belief—that it is based on what happened last summer, and based on the perception that people have of the New Jersey shore. I might add that most of it is real, but some of it is a perception. That perception, I believe, is going to cause difficulties next summer for us that are unparallel. This summer we lost the day-trippers to the shore. This summer we lost the weekenders who came to motels, and we lost some fishermen who didn't want to come to the shore.

As you pointed out—and rightfully so—we lost some people who came to the shore who wouldn't swim in the ocean, who were afraid of becoming ill, and I can understand that very well.

If we are not able to make some tangible steps toward assuring the public that things will be better next summer, by January—when my friends go to the shore to rent a house for a week in the summer—and by February and by March, those folks are going to opt to do something else. My worst fear is that this summer will be an economic disaster at the shore.

I know that we're here to talk about the environment, and that is the number one issue for us to discuss today. While our primary concern should be an environmental one, I believe that it is important for all of us who are dealing with this problem to recognize the economic aspects of it, as well.

As a direct result of a hearing which Congressman Hughes and I held in conjunction with the Oceanography subcommittee from the other house, we have introduced a bill which is, in some respects, similar to this one. It is a medical tracking bill which carries forth many of the same provisions that this one does, but I must admit that it's not as comprehensive as yours is, and that's why we decided to proceed to introduce the House version of your bill—with your permission, I might add.

Senator LAUTENBERG. Happy to have it.

Mr. SAXTON. I know we all get in trouble for doing things that we don't attribute to others around here any more, so we want to make sure that we give you full credit for authoring the bill that we introduced.

I can't emphasize enough how important this subject is to my constituents and to the people from New Jersey and to the people who vacation at the New Jersey shore in the summertime. I believe it is a very important step. I believe it's one that affects not only the environment, but the very perception that will create a good environment at the seashore this summer, one which people will opt to vacation in, or one which people will opt not to vacation in. For that reason, your emphasis on the speed at which this hearing was held is commendable, and I hope that we can convince the members of both houses to move forward on this issue and others related to it in the next couple of months because I believe in this case, more than anything else, time is of the essence.

Senator LAUTENBERG. Thank you very much, Congressman Saxton.

The fact is that with all of our interests in getting this done, we've got to work very carefully, very expeditiously together to see that it happens because others here, and on your side, obviously, don't understand the urgency. You made it very clear that it's not only a temporary economic upset—because that could lead to permanent upset—but it's the whole structure of our culture. That little State of ours depends very much on tourism. It's the number two business in the whole economy, I think. It's somewhere around $11 billion. As you said, Congressman Hughes, a major part of that centers on those beaches and on the ability to go down there and rent a house and enjoy nature at its—we hope—at its best. So it is urgent.

We don't want to create a psychology that says, "Look elsewhere for your vacation. Look elsewhere for your second home. Look elsewhere for your investments and your jobs." So we need to put a lot of pressure on.

I would ask each of you—I think I heard it clearly in your message, but I think, as you both know, around here you've got to be very clear. Is it time for the Federal Government to take a role in controlling this problem?

Mr. **Hughes**. I don't think there's any question that it's going to take a Federal response.

Senator **Lautenberg**. Why can't it be done at the State level? What we hear from some adversaries here is, "Well, why, again, the Federal Government interfering?"

Mr. **Hughes**. The State has very little control about what other States do, for one thing. Part of the problem is that we in New Jersey generate much of our own waste which ends up in the ocean, but we also inherit quite a bit of waste from neighboring States. We've been in litigation in New Jersey for the better part of—I suppose, at this point, 50 years with New York City over the dumping of trash and garbage. I believe a court order back in the early 1930's might still be in effect, which is directed to much of the dumping in New York State.

Now, I'm not suggesting that it's other States that contribute to our problem, because I think we discovered that the enemy is also us, in New jersey. But I think it's going to require a Federal response to deal with, basically, a multi-State problem. It goes beyond the bounds of any one State.

Senator **Lautenberg**. Congressman Saxton.

Mr. **Saxton**. I have difficulty adding a whole lot to what Bill Hughes said in terms of the difficulty in one State, such as New Jersey, controlling the sources of plastics and medical waste and various types of pollutants that end up in the ocean of one kind or another.

Recently, in the Merchant Marine and Fisheries Committee, we dealt with a bill that has to do with plastics that are dumped from military vessels, certainly a Federal program and one which the States would have a great deal of difficulty, if not an impossible situation in trying to deal with.

We also know, as was pointed out just a minute ago, that much of the problem that we experienced in New Jersey was a result of our own people in New Jersey. We also know, from addresses found on medical bottles and prescription bottles and so on that much of that waste emanated elsewhere. So it is an interstate problem, and one that the Federal Government should rightly deal with.

I might put it in perhaps a little different way. Two things happened this summer. One was on August the 13th. I went to the shore and stood there as vacationers were picking up medical waste, it was a very dramatic thing. The television cameras were there, they collected syringes in a bag and they appeared on the television screen that night; it was terrible. It was a terrible perception and a terrible thing to have happen to the New Jersey shore. Important because people were there and this was waste that we think came from some place else.

The other thing that happened this summer was also one that's very difficult for New Jersey or any State to deal with alone. I was sailing—Senator Baucus indicated that he's a sailor, and so am I. I was sailing from Cape May to Barnegat Bay this summer and I ran across a pair of dolphins, one was bottom-side up gray, and the other one was still alive. That is a difficult situation which may, very well, have something to do with what we're doing to the ocean environment. A situation that is very difficult, again, for New Jersey to deal with, or for any other State, individually, to deal with.

So I believe it is primarily a Federal role, and I know there are State officials here today who have communicated with us earlier with regard to their desire to be helpful. However, I believe it is primarily a Federal role to be played because of the broad-scale types of problems that emanate from multi-State sources.

Mr. HUGHES. Can I make just one additional point, Senator?

Senator LAUTENBERG. I take it neither one of you would agree with a statement by an official of EPA that this was an aesthetic matter, exclusively?

Mr. SAXTON. When I saw that article, Senator, I went in my office and I sat down and I personally wrote a letter to that individual and asked him to explain to me why this is just an aesthetic problem. I cannot imagine medical waste being called non-harmful in any way. It still leaves me without knowing what to say about it. But I did write to that individual, who you and I both are familiar with, and, frankly, to this day I have not received a reply from him.

Mr. HUGHES. I find that incredible. For a while we learned of mammals that were ingesting plastics and the great harm that was done to mammals; but we've had a rash of infections. They've never directly tied it to the water, but it can't be healthy for one to be bathing in waters with the kind of debris that you'd find in a landfill.

The point I wanted to make, in addition to the importance of this legislation, is the need for the regulatory agencies to beef up their operations and to begin enforcing the laws that do exist.

I know the Coast Guard is here today, and we're now moving the sludge dumpers to the 106-mile site. It's my hope that we can, in addition to developing new legislation providing for a manifest, to step up our enforcement activities. I know the Coast Guard is spread very thin, but it seems to me that we should possibly be looking at—and I requested this from the Coast Guard—periodic inspections of the vessels, because the risk of short-dumping is going to increase as we move from the 12-mile site for sludge dumping out to the 106-mile site.

I believe it's important for us not to just put in place new laws, but also to provide resources and the encouragement for the enforcement agencies to do the job that needs to be done in enforcing the laws.

Senator LAUTENBERG. Thank you very much, Congressman.

The Coast Guard is really overstretched with continually new assignments, with squeezes on resources as a constant. We want them involved with drug enforcement, navigational assistance, monitoring trash, sludge, etc., and one of the things that we did recently was to give them some funding to put some black boxes on sludge-carrying vessels so that we could make sure that they didn't get lost along the way to the dump-site, which, by the way, we don't like either but compared to what our alternatives are we've accepted it, and I hope that's temporary, Bill, and that we'll eventually get out of ocean dumping.

The tales—and we'll close with this—about being out on the ocean and seeing man's carelessness—we heard from Senator Chafee about talking to an around-the-world sailor, one of the people who raced single-handedly around the world in a sailboat, who said that even when he was 1,000 miles off any coast that he would see spots where there was debris and junk, flotsam and jetsam, you name it floating in the water far away from man's obvious presence. This pollution has begun to permeate the oceans, and we've got to fight hard against it.

I thank both of you.

My distinguished colleague, Senator Pressler, from South Dakota, also, I believe, without an ocean, has arrived. I know, Senator Pressler, that you're concerned about environmental issues; I just wondered whether you'd want to ask Congressman Hughes or Congressman Saxton any questions, or whether you had a statement you wanted to make.

OPENING STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator **Pressler**. Thank you, Mr. Chairman. I have a statement for the record.

I want to commend the gentlemen on their statements. I shall be listening with much interest to be educated on this subject. We do not have an ocean, but we are concerned about what happens in our Nation regarding pollution.

I shall have to leave because I have the new, prospective justice of the Supreme Court coming to my office in a few minutes. I do ask unanimous consent to place my prepared statement in the record.

Senator **Lautenberg**. Without objection. Thank you, Senator.

Senator **Pressler**. Thank you very much.

[Senator Pressler's statement follows:]

Opening Statement of Hon. Larry Pressler, U.S. Senator From the State of South Dakota

Mr. Chairman, thank you, for scheduling this hearing on S. 1751, the Shore Protection Act. This is an important issue which needs to be addressed.

Garbage being washed up on beaches and ocean shores create an eyesore. This problem creates problems for the beach tourism industries and cost local governments and private entities money to clean up the garbage. The garbage also creates environmental problems in the water.

However, this problem is part of a much larger problem. What should we do with the millions of tons of garbage generated each day? This is a growing problem which needs to be addressed. A comprehensive program to effectively dispose of the increasing amount of garbage needs to be developed.

Mr. Chairman I look forward to hearing the witnesses and working with you and other members of the committee on this issue.

Senator **Lautenberg**. I want to thank this panel for spending their time with us and for their thoughtful testimony, and for your pledges to work with me and I with you on getting this legislation moving, and to continue to introduce ways to protect our oceans, our beaches, and ultimately our families. This is the time to do it, before we're swamped by this beyond our ability to fight back.

Thank you very much.

I would ask the next panel to please come aboard, as they say: Captain Robinson, Captain North, Mr. Denit, and Mr. Davies.

We don't play favorites here, as I'm sure you know. We're very interested in your testimony, but we will now turn on the clock because we do need for you to summarize your comments.

Mr. Denit, will you both be testifying?

Mr. **Denit**. No, sir. The people joining me are available for questions.

Senator **Lautenberg**. I see. OK.

Well, then, why don't we do this—Captain Robinson, will each of you be testifying, or will you just work as a team there?

Captain **Robinson**. We're working as a team, Mr. Chairman, to answer any questions.

Senator **Lautenberg**. OK. What we'll do is give each of you 10 minutes to present your testimony. We have an expert over here who knows how to set the clock. It's been so long since I've been in the field of technology.

Thank you.

We'll ask Mr. Denit to testify first, if you would. Or have you decided among you how you want to?

Mr. **Denit**. I'm speaking on behalf of both agencies.

Senator **Lautenberg**. Thank you.

STATEMENT OF JEFFREY DENIT, DEPUTY DIRECTOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY TUDOR DAVIES, DIRECTOR, OFFICE OF MARINE AND ESTUARINE PROTECTION, ENVIRONMENTAL PROTECTION AGENCY AND CAPT. TOM ROBINSON, U.S. COAST GUARD

Mr. **Denit**. Good afternoon Mr. Chairman and members of the subcommittee. I am Jeffrey Denit, Deputy Director of the Office of Solid Waste at the United States Environmental Protection Agency. I am presenting this testimony on behalf of J. Winston Porter, EPA's Assistant Administrator for Solid Waste and Emergency Response.

With me today is Tudor Davies, the Director of the Office of Marine and Estuarine Protection and Captain Tom Robinson from the Coast Guard and his associate. I also have available Lisa Friedman and Susan Lepow from our Office of General Counsel if questions arise requiring their assistance.

We appreciate the opportunity to be here today to discuss EPA's position on S. 1751, the "Shore Protection Act of 1987."

S. 1751, according to its title, is a bill to require vessels to manifest the transport of municipal or other non-hazardous commercial wastes transported offshore to ensure that these wastes are not illegally disposed of at sea. In essence, the bill would require vessels transporting RCRA Subtitle D wastes to obtain a vessel identification number from EPA and to comply with a manifest system intended to track these wastes from the point of loading through disposal.

In addition, the bill would require the owner/operator of the waste source facility and the owner/operator of the disposal facility to ensure that the waste material is properly loaded onto and unloaded from the vessel which transports the waste.

Finally, the bill would require EPA and the Coast Guard to conduct studies to evaluate systems for surveillance or tracking of vessels transporting Subtitle D wastes. S. 1751 would apply to vessels in inland waters and out to the end of the 200-mile Exclusive Economic Zone.

To the extent that municipal waste is dumped into ocean or inland waters during the transportation of these wastes, a violation of existing U.S. law has occurred. The Federal Water Pollution Control Act, as amended, prohibits the discharge or disposal of such waste in the inland and territorial waters of the United States without a permit. In addition, the Marine Protection, Research, and Sanctuaries Act prohibits the transportation of materials for the purpose of ocean dumping, except as may be authorized by a permit issued under that act. Therefore, enactment of this legislation would create a duplicative regulatory program.

The EPA nor the Coast Guard is aware of any evidence to suggest that the problem being addressed by this bill warrants a national manifest system for vessels transporting municipal waste. Furthermore, if the illegal ocean dumping or discharge of municipal waste were found to be a national problem, it is likely that a workable solution would involve enhancement of enforcement activities——

Senator LAUTENBERG. Excuse me. In your testimony you say a "more" workable solution. Did you say that? A "more"?

Mr. DENIT. Yes, sir. I had stricken the word "more" from my testimony.

Senator LAUTENBERG. Good.

Mr. DENIT. Workable solution would involve enhancement of enforcement activities under existing law rather than the creation of an entirely new mechanism.

In addition to our major, overall concern with the Shore Protection Act—that it addresses, on the Federal level, a symptom of a problem which is more rightfully the concern of State and local governments—EPA would like to note some other problems with the implementability of this bill.

We note that the vessel identification number required under title I and manifest requirements set forth in title II of the bill apply to vessels which transport municipal or commercial wastes, regardless of the purpose of its transportation. Thus, the bill seems to reach not only vessel transport of wastes for ultimate land disposal, but also transportation for purposes of ocean dumping.

As mentioned earlier in my testimony, the Marine Protection, Research, and Sanctuaries Act already prohibits the transportation of materials for the purposes of ocean dumping, except as may be authorized by a permit issued under that statute.

While EPA has not issued any permits allowing the ocean dumping of municipal trash or garbage, because of the broad manner in which the bill is drafted it would seem to apply to activities already subject to regulation under this law.

Although section 801(a) of the bill provides that it does not supercede or preempt any other laws, the bill does not specifically address whether its provisions are to be applied in addition to other existing statutory requirements. In particular, the bill does not specify whether vessels with valid Marine Protection, Research and Sanctuary Act ocean dumping permits are additionally subject to the vessel identification number and manifest requirements.

We also note that the definition of "vessel" in section 101, subsection 8 specifically refers to the transport of dredged material. The responsibility for permitting ocean dumping of dredged material lies with the U.S. Corps of Engineers under section 103 of the Marine Sanctuaries Act. Since dredged material is only referred to in the bill's definition of "vessel" it is not clear to us whether the bill is meant to apply to dredged material disposal.

The timeframes suggested in this bill are not achievable. The 180 days to call in all permits to be issued under this bill is extremely ambitious; it would not allow time for EPA to develop a program, permit standards, or regulations. Likewise, the 30-day deadline for EPA to issue each individual permit is simply too short.

There is one last item I would like to mention about S. 1751. Section 201(d) of the bill would require that the owner/operator of a disposal facility to send in manifests on a weekly basis. This is more frequent than is required for hazardous wastes, but, more importantly, there is no exception reporting system to flag those instances where the waste never reached the disposal facility.

This concludes my prepared statement. I would be pleased to answer any questions you may have at this time, as well as my colleagues.

Senator LAUTENBERG. Thank you, Mr. Denit. What I'll do is take the Coast Guard testimony next, and we'll—okay. I'm informed that you're here to be responsive and not to deliver testimony.

What if I were to ask you for some off-the-cuff additions as to what you see as either the objections or support for this legislation that strikes you particularly? What kind of a response would I get?

Captain ROBINSON. Thank you, Mr. Chairman.

We have not seen the problem of illicit dumping as being a particular problem Nation-wide. While we do support the environment and support your efforts to improve the environment, the number of violations that have been reported to us and that we have gone ahead and filed—while I do not have those statistics immediately available, we could provide them—but from my experience there are probably very few where there are actual violations of ocean dumping of garbage or debris.

Senator LAUTENBERG. Well, I'd have to say to you that this stuff materialized out of somewhere. If it materialized out of thin air we ought to get the process, because it creates an awful lot of junk and a lot of debris. So if it's washing in from the ocean it's obviously being made available for that trip some place along the way. When I hear you say that you don't hear about violations of existing laws, some of which Mr. Denit suggested are already taking care of these problems, I'd have to ask you where this stuff comes from.

I know Captain North is up in the New York Region. You and I have taken a garbage tour up there.

Captain **North**. Yes, sir.

Senator **Lautenberg**. It's not listed on the Carnival Cruise Lines, but we did see a beauty out there in terms of that garbage barge, and it brought everybody's attention to the problem. Then we had the terribly unsightly plague that struck the New Jersey shore. It has stricken it for some time now, but finally got to the level at which people said, "Well, that's enough. We're not going to take it any more."

What is your response to how we get it? Where does it come from? What do we do about it?

Captain **North**. Well, in relation to the infamous garbage barge, the MOBRO 4000, we have found no routine transportation of trash in bulk off the coast. The MOBRO 4000 was an anomaly in that respect.

We have taken some initiatives as a result of this summer's pollution in looking for that type of activity. We have aircraft patrols twice weekly down the coast toward Tom's River, New Jersey, from New York. My boat patrols, as well as the other boats that I have out on the water in the upper and lower bays of New York, are on the lookout for vessels that are in route to Ambrose or out to sea that are carrying trash or garbage in bulk as the MOBRO 4000 did.

We are not aware, again, of any routine off-shore shipment of trash. In fact, none since the MOBRO 4000's trip. There is, however, routine movement of trash in bulk in vessels in New York Harbor. It is essentially a captive fleet operated by the City of New York. We are well aware of that operation; it is a very visible one. We see it all the time as we're out on our harbor patrols and out doing other work in the harbor. I'm not aware of any other routine transportation of bulk trash operation within my zone of responsibility.

The source of the trash off the Jersey shore is still under investigation by a number of agencies. I think there's been a lot of speculation as to sources of that, but I think it is an accumulation of trash from various sources: dunnage and packing from vessels off-shore; hotel trash from vessels off-shore, which would be ship-board generated garbage as opposed to cargo taken out and dumped; recreational boating refuse; wash-off from storm drains of litter in the streets; things of that nature combined with climactic conditions of tide and current that caused a great deal of that to coagulate into this 50-mile slick or 20-mile slick, or whatever.

Certainly there are many sources of this trash off-shore. I feel that the routine operation of the movement of trash in New York Harbor conducted by the city is not one of those sources. That's not to say that there aren't, on infrequent occasions, some midnight dumper—if you want to call it that—that goes out and dumps small quantities of trash in comparison. That's what we're looking for.

In addition to increasing our patrols' awareness and working with Air Station Brooklyn to conduct air patrols down the coast, we are also using aircraft from Brooklyn to conduct harbor patrols of the New York Harbor upper and lower bays to look not only for vessels in transit carrying trash that are not part of the operations that we're aware of, but to look for areas on the shore that might be places where trash is accumulated for loading of vessels or off-loading.

Additionally, we've taken action with the U.S. Attorney's office in the southern district of New York to meet and discuss the problem of how we both may better and more effectively enforce the existing statutes—Refuse Act of 1899; Federal Water Pollution Control Act; Marine Protection, Resources, and Sanctuaries Act--and also expand the work that we're doing with the U.S. Attorney to include other Federal and State agencies in the form of a working group that can better coordinate, and concentrate our efforts and the resources that we do have toward finding the midnight dumper, or the person who is—let's say a "non-routine" operation that might be the source of some of this trash.

Senator LAUTENBERG. I hear what each of you are saying, but it does leave a fairly profound mystery, as far as I'm concerned. You say that you don't see any violations and you opine that maybe it's commercial vessels and recreational vessels. Well, sir, does that include rubber tires? Did some guy's yacht out there just throw some tires overboard? Or hospital waste? I think we've seen a couple of refrigerators. I guess a guy in a sailboat got tired of his old refrigerator and chucked it overboard and said, "To hell with it, we'll get another one"?

Captain, I think you're being technical, and I respect your point of view. The fact is that we have a very serious problem. There is evidence of material being put into the sea some place. Now, if you say in your comments that you might better enforce this—I think I quote you there—how might you better enforce it if you don't think there's any problem in the first place? And how did New Jersey get to be so lucky as to be the recipient of all this debris and garbage? This is not being carried by some mysterious monster that walks across the water, it's floating in. It's coming in on the current. It's coming in on the waves. It's getting there somehow or other.

If you're content that the law of 1899 origination and others are there to take care of it, then how is this getting through this safety net to contaminate our beaches and our existence in those shore communities?

Captain ROBINSON. Mr. Chairman, I know that we don't want to discuss Annex V here, but we sincerely believe that Annex V of MARPOL will deal with the significant portion of the debris that's being found in our coastal waters—coastal, I would mention, not inland waters—and that by prohibiting garbage being thrown overboard from individual vessels—and we believe that that's where most of this type of debris is coming from is from individual vessels throwing their own generated garbage overboard, or old refrigerators, or whatever—that with additional surveillance and resources, if we were provided with them, that we would be able to do a better job of stopping garbage pollution, and that Annex V will give us the tools that we need for that type of debris that's coming from vessels.

Senator LAUTENBERG. I just wanted to confirm it. I'm a supporter, as you know, of the Annex V adoption that we, I hope, will be considering tomorrow in the Senate. But that still leaves a substantial question as to how big a ship it is out there that dumps a 30-mile trail of garbage and debris. It's pretty hard to reconcile those two, and I, frankly, can't understand why it is that if you see the problem—and I know you're pushed, I know, as I said earlier, you're being stretched thin—why you would not think that it is a good idea to have crews trained in cartage method and loading and unloading, making sure that there is no accidental or casual release of material into the sea, whether it's transferring from barge to landfill or from landsite to the barge.

Annex V may or may not get the kind of enforcement we want. Though all ships of a signatory nation will be subjected to it, the fact is that you start to get out there some fairly good distances, and I don't know how we're going to enforce that sufficiently to make sure that there's no breach in the safety net.

I'd like to ask Mr. Denit from the EPA, do you see any problems with this debris trail that we're finding that we might deal better with? Do we simply need more enforcement? If we do, who should do it? Or do we need to revisit the whole thing and say that the legislation that we've presently got on the books obviously doesn't do the job.

Mr. DENIT. I think of a couple of points I'd like to make, Mr. Chairman, reinforcing the Coast Guard's remarks. Backing up just a bit, EPA's Region II is already working very closely, of course, with the Coast Guard in the whole New York Harbor area. One of the points that I've been advised the agency is undertaking to work with the City of New York around the 814 or so transfer stations in that area is to investigate some sort of control measures for plastic netting, or whatever.

Senator LAUTENBERG. Does that suggest that the City of New york is creating some of these problems?

Mr. DENIT. No, not specifically. It's just that——

Senator LAUTENBERG. Why are we going to investigate the City of New York?

Mr. DENIT. They're not investigating. I said they're working already with the City of New York around the transfer stations, and have already been working with the Coast Guard in terms of their monitoring program.

More specific to your question, I don't think—and I think the point that we wanted to make in our testimony is that if you speculate that the size of the slick and the problem that hit the New Jersey coast some few months ago was from a particular incident, I think our whole point is that that incident, by its nature, had to be an illegal dump of some sort. It simply wouldn't necessarily have been, in our view, a particularly routine activity. Thus, our point is that the existing statutory authorities, particularly under the Federal Water Pollution Control Act, preclude those activities.

The issue of enforcement I would also stress that we make. It may well be that a more rigorous enforcement of that authority is the point that ought to be called for here, or perhaps even—notwithstanding some earlier comments that I've heard—a cooperative agreement at the local level to provide some more management practices between and among the States or the City of New York and the State of New York and New Jersey or some of the other

States would, in fact, reconcile the problem specific to that harbor area or your coastline in the State of New Jersey.

Senator LAUTENBERG. What happens if we don't get it? Aren't we besieged enough by this stuff that's—I want to be polite in my language—this stuff that washes up. Do the four of you think there's anything wrong? Is this an imaginary problem that we, in New Jersey, suffer with? Or have you seen enough evidence to say, "Aha, there could be something wrong there"?

Mr. DENIT. No, I think we agree definitely that there's something wrong there. I'd hearken back to the testimony that was provided to the House a month or so ago by Christopher Daggett, who's EPA's Region II Administrator, who pointed out—I guess perhaps the word is "diversity" of potential sources with which we may be confronting a problem here. It's not simplisticly stated as plastics from commercial vessels.

In conversations I've had over the course of the last several weeks we've found everything from picnic debris in 15 or 20 sacks, which could have come from a pleasure craft of some sort; potentially, as indicated by Mr. Daggett, storm sewer overflows; high, windy conditions blowing from wherever, whether it be landfill sites or just debris off the land, these things will get out into the surface of the water, and if there's any kind of an oily slick anywhere nearby, whether the garbage was associated with it or not, the plastic material will migrate to that oil slick and get kind of caught up in the stickum and then you really do have a mess.

The point, however, of course, is that if you enforce against an incidental spillage, we'll say, with the routine transport of garbage, you haven't necessarily dealt with what I'll call the "problem." The agency is already actively trying to take some look at breaking down where the sources are and what our authorities are.

Senator LAUTENBERG. Do we acknowledge that there could be illegal dumpers out there?

Captain NORTH. I can address that, I think, Senator. In terms of—again, this is related to the New York Harbor/New Jersey Coast area—in terms of quantity of transportation, the quantity that I'm aware of is about 30 barge-loads a day in New York Harbor, approximately 700 tons a load.

Senator LAUTENBERG. That's in that fairly narrow area?

Captain NORTH. Yes.

Senator LAUTENBERG. Out to Fresh Kills?

Captain NORTH. Yes, sir. That's correct. It's loaded at ten sites.

Senator LAUTENBERG. Where is the pick-up station?

Captain North. There are 10 pick-up sites throughout the city where it is transferred from truck to barge, and then barge to Fresh Kills, and off-loaded.

Senator LAUTENBERG. And that's 700 tons a day?

Captain NORTH. The barges have a capacity of about 700 tons. There are about 30 barge-loads a day.

Senator LAUTENBERG. And those are approved carriers?

Captain NORTH. That's a city operation.

Senator LAUTENBERG. Are they subject to permits?

Captain NORTH. Not from the Coast Guard.

Senator LAUTENBERG. Not from the Coast Guard. Who gives them those permits?

Captain **North**. I don't know what permits they may be subject to.

Senator **Lautenberg**. Well, that might suggest that we at least have some place we ought to take a peek. I mean, if we don't know, and there is 30 barges with 700 tons each of junk a day floating through there.

Captain **North**. Well, that's in the barge, Senator. I'd like to add something to that, if I could. The configuration and the way this operation is conducted would lead me to believe that it's not a very likely source for trash dumped in the water. The barges cannot self unload.

Senator **Lautenberg**. Right. But when they get to that Fresh Kills unloading station, I guess it's possible that some strong winds, or maybe careless tie-up of the vessel, or something of that nature, as remote as it sounds, could dump some stuff into the river there and be carried out.

Captain **North**. The possibility exists. Yes, sir.

Senator **Lautenberg**. It's stacked up fairly high there, and winds could also carry——

Captain **North**. I think EPA indicated that they look at blowing trash as a possibility. What I'm talking about is the possibility of the trash being off-loaded in transit between the pick-up sites and Fresh Kills. I think that's a remote possibility.

Senator **Lautenberg**. In that particular instance?

Captain **North**. Yes.

Senator **Lautenberg**. Isn't it possible that as we see the costs for disposal increase that more and more possibilities of illegal discharge or dumping could take place? I mean, these things often result from an economic pressure that suddenly changes an existing equation. It's got to be awful tempting to just get out there and let it go, but we don't want to give that an opportunity to be established. What we want to do is catch it while we can.

What are the incentives now to discourage ocean dumping if there is weak enforcement? I question the laws that govern. If I'm right and if you're right what is there to discourage casual dumping of trash at sea?

We know vessels are doing it now, and they are, in many cases, tied in by the various agreements not to do that.

Captain **North**. Well, Mr. Chairman, I think a lot of it is, as much as anything, set aside and maybe build it in two different directions. One is the actual overt illegal dump of any kind of a major haulage of garbage or other wastes, which I'm not too sure you could legislate against. I guess it's just going to be illegal.

Correspondingly, however, we do have, perhaps, an overly careless society in many regards. I'd like to turn to my associate, if I may, Mr. Davies, for one further comment with respect to the gulf where we do have shoreline contamination problems of this type, but really don't have barge traffic in solid waste. Tudor?

Mr. **Davies**. Yes, Senator. Padre Island, for instance, as we've seen from the Center for Environmental Education report, has a significant problem with the wash-up of plastic materials and garbage of various sorts, and our perspective there is that this is coming from disposal of perhaps platforms—oil platforms—or from ships at sea. We are working towards a general permit there which would prohibit any rubbish, trash, or plastics being disposed from ships, and authorize only, then, things like organic food waste and normal things like sewage discharge and cooling wastes, etc., from vessels.

We do have a problem there on the coast, and this is why I think both we and the Coast Guard are very supportive of you ratifying Annex V, which I think will get at some of these problems.

Let me also add that the Federal agencies have a task force at work to look at the implications of plastics in the ocean, particularly fishing nets, etc., and also at sources of this material. EPA has a study going in Region II which is looking at the land-base sources of debris to the marine environment, particularly combined sewer overflows, which, again, may be a significant source of debris to the coastal waters.

We are very concerned about this issue. I think our comments here are not meant to say that we are not concerned about removing plastic debris and other debris from the beaches. I think our concern is that your bill is pointing at one singular source, and perhaps we don't think that that is as significant as it may appear.

Senator LAUTENBERG. Well we, as you know, Mr. Davies, and I know that our colleagues at the Coast Guard are aware, we've been approaching this problem from several directions. Number one, I assume that you're aware of my plastics prohibition bill that is now being considered, and that is designed to catch those things that perhaps will not be taken care of by Annex V. We know that plastics are dangerous at sea to sea life and sea animals. Also, their permanent character is something that is of great concern. So we're taking care of one part of it that way.

I, too, have aggressively supported the Annex V ratification, and here's another source because the materials that we're talking about—plastics—are not only materials, but perhaps among the most ugly that we see on our beaches. We do have these other things which you've heard about—rubber tires, and a whole list of things.

So we want to get at it, and I would ask you to summarize for me—each agency here—if you had to state a principal objection to this bill, how would you characterize it?

Mr. DENIT. Mr. Chairman, I'd suggest that the core issue is probably the breadth of something as compelling as the national manifest system for what is essentially a fairly localized issue at any given point in time. It's probably the largest concern of the agency. It brings to bear rather amazing resource implications.

There are major questions, and I guess at another level I would address the major implications or concerns with respect to whether or not—or what would be, in fact, we'll say the "source term" and its relevance to the degree which this bill would address it, and whether it's pleasure craft, in reality, or if it's an illegal affair that simply legislating against it wouldn't control it in any respect.

Senator LAUTENBERG. So you're not saying that we might not catch a large part of this material before it hits the water, but rather that the manifesting and the record keeping would be burdensome. You talk about a national thing and describe it as a local problem.

Mr. DENIT. Well that, and combined with the fact that there are permitting authorities. Indeed, the very terms that are used in your bill—for example, "vessel" and "solid waste"—are terms used in the Clean Water Act. So you have, in the case of an illegal situation here, in fact, a violation of Federal law already. For example, in the cases of both New Jersey and New York, who are empowered to administer the permitting program under the Clean Water Act, if they were to find someone dumping or discharging, as it were, they could presumably take action pursuant to that authority for failure to have obtained a permit under the Clean Water Act in the first instance.

Senator LAUTENBERG. They don't have the facility in each of these States. The other thing is that if there are so few vessels that might even be suspect here, then we obviously would not be accumulating a lot of data. But the one thing we would do is put out a major alert that if you're out there and doing it we're going to be watching you. If you don't apply for a permit you're going to get ensnared in the law and we're going to prosecute. We're going to enforce and prosecute.

Captain North or Robinson, what do you think?

Captain ROBINSON. Yes, Mr. Chairman. We would agree with Mr. Denit's comments regarding manifesting and permitting that this would put controls on the legal carriers of municipal waste, and would not—while the penalties might provide some second thoughts by the illegal dumpers in that they don't want to be caught, the permitting part of it would not affect illegal dumpers. They're not going to apply for a permit. The Coast Guard, in having to then ensure that barges are carrying these permits, would mean more resources. Captain North knows about those sorts of things better than I do being the captain of the Port of New York.

One further comment. My staff did check with the other captains of the port around the east coast and the gulf coast to ask them if there is any municipal waste being carried by barge or by vessel in any of their ports. None of them knew of any being done that they had seen, either under a local permit program or just that their people had seen transiting in and out of the harbor. None of them knew of any that was being done on a routine basis. They may have seen an occasional vessel transporting municipal wastes within the harbor, but none of them were aware of any operations going on other than the New York/New Jersey Harbor area.

Senator LAUTENBERG. And that would have been a lot less apparent had we not seen the infamous barge on its cruise up and down our coast. The fact is that there was someone carrying municipal waste. That vessel didn't require any kind of a permit. They were out there. What changes it now? Why wouldn't someone else do it?

If they're going to take the risk that they'll not apply for a permit, and be out there with this illegal load, they run the risk of violating a law just like anybody else does. You can get by with passing traffic lights unless there's a cop there. Unless the Coast Guard is there, unless you have some way of enforcing it—for you to be able to snare someone in the act of dumping out there is pretty remote.

We know, again, that your capacities are being taxed by more assignments and spare resources, but I want to make sure that you get the resources, and I also want to make sure that you, the singular agency that has the capacity to do this thing, is assigned that task.

I thank all of you for appearing here. We obviously have not convinced you that there's a problem there. I hope that each of you will be buying a summer home and swimming in the beaches of New Jersey, and once you see you and your kids out there splashing in the goo we'll ask you the same question again.

I think that my view is that you're turning your back on the problem because you either don't think that it's serious enough, or you're content to have holes in the net that we see out there.

Now, Annex V is going to help, and I'm going to support it, but that is not going to make the difference because, Mr. Davies, we have other countries' coastline not too far north and south from us that are not as likely to enforce the Annex V, so we'll be subject to their problems. What we want to do is make sure that we don't create any within our area of jurisdiction.

Thank you.

Mr. DENIT. Thank you, Mr. Chairman.

Captain ROBINSON. Thank you.

Captain NORTH. Thank you.

Senator LAUTENBERG. I'd ask the next panel—that's Mayor Winterstella and George McCann, Mr. Mandelbaum—I'd ask the remaining two panels to come to the table together, Ms. Sally Ann Lentz, as well. There are four chairs up there, and we can—we'd ask Mr. McCann and the mayor to sit on one side, and Ms. Lentz and Mr. Mandelbaum to sit on the other.

We thank you for being with us.

The mayor and I have had contact in the past. He is the mayor of the community that I know very, very well where I, as a young man, summered occasionally, and where we never were aware of any beach pollution/ocean pollution problems in those days.

I would invite you to give your testimony under the five-minute rule for each of you.

We start off with Mayor Winterstella.

STATEMENT OF HON. JOHN L. WINTERSTELLA, MAYOR, CITY OF MANASQUAN, NJ

Mayor WINTERSTELLA. Thank you, Senator.

I appear as certainly in favor of your proposal. I would like to condense my testimony as much as possible, because there are several things I think that should be brought out that I wasn't aware of. Unfortunately, the Coast Guard has left, but I would like to enter onto the record in a little while that I have seen barges offshore moving trash with the small hopper cranes, and so forth, on them. I just assumed that was certainly known traffic to the Coast Guard, and am a little bit shocked to hear their testimony today that it wasn't.

Briefly, Manasquan is a shore-front community. On a typical summer weekend we cater to roughly 10,000 to 15,000 beach-goers.

We have parking for roughly 2,000 vehicles. Our beaches are run as a utility, and we invest $1 million a year in that utility.

One of the things that we were forced to replace earlier this spring was our beach cleaning machinery and trackers because of the amount of debris that is coming up on our beaches. We spend about three or four hours every morning manicuring the shoreline of the Manasquan beaches.

We've had to do that because—and, again, I'm trying to compress some of this, but there are headlines in most of the shore papers—here's one from July 2—and I found it somewhat ironic that the top story was, "Clues sought on health risk of swimming in the Atlantic Ocean," and right below that it said, "State Kicks Off Clean Beach Campaign." Depending upon which article you read would certainly decide whether you wanted to go to the Jersey shore or not. About that same time, "Medical Waste often Slips Through, But Officials See No Health Hazard." That kind of journalism has certainly tempered the interest of our resort visitors, because they've been a little bit concerned.

We have an organization called "Save our Shores" which is formed by a group of doctors down there who report a number of illnesses related to the water.

My daughter, who sits in the audience today, works for our Beach Department, and in 1986 she had to come to the aid of a young mother who was several months pregnant who went in knee-deep water only to have a hypodermic needle go into the calf of her leg. I could relate many of those kinds of stories to you.

The amount of trash and debris that we're picking up off our beaches is certainly increasing. We have reason to believe that some of this is coming from New York City because, again, the labels on the bottles and the hypodermic needles and the medicine bottles, etc.

It is not a pretty story. It's a story that I think there is a lot more dumping going on offshore than maybe what the Coast Guard or the EPA is willing to recognize at this point in time. Both times that we had serious debris on our beaches there was an east wind which brought it in from the off-shore areas. Traditionally on the Jersey shore in the summertime we have a west wind, which would tend to drive this stuff further off shore.

I've been told that it's in the neighborhood of $1,500 to dispose of this red-bag hospital waste in New York City. To get a carter to take this is about $1,500 a ton. Now, earlier it was mentioned that some of these barges carry up to 700 tons. You can imagine, instead of taking this waste up to Quebec where it's supposed to be taken and incinerated, the profits involved to somebody who wanted to make a lot of money in a very short period of time.

It's not a very technical process. All you have to do is load it up on a barge, and if you don't have a crane on that barge maybe just put a small crane on it in the back, which is a very common site up and down the Jersey shore; they use them for dredging docks and so forth. It is a common sight up and down the Jersey shore. They use them for dredging docks and so forth. It's a common occurrence to see these barges go by.

As I mentioned, I wasn't aware there was anything significant to it other than my own safety. I happened to be going off-shore to go tuna fishing in late July, and we had one of our engines start acting up, and we came back across. About 12 miles off Monmoth County we crossed two barges—I picked them up initially on radar—that were loaded with garbage, and I just assumed it was a normal occurrence. But they also had cranes on them.

In closing, I'd like to just leave you this photo. This is one I took off of the 60th Street Heliport in New York City on East River. It shows two barges loaded with garbage higher than the tug that was pushing them. If you look closely, you can also see this garbage coming off all over. To me it was a very obnoxious site, being a shore mayor, to have to watch this traffic traverse the East River knowing that some of this stuff was going to end up on the Jersey beaches.

Thank you.

Senator LAUTENBERG. Thank you, Mayor. Sorry that we did have to rush you.

It is interesting to me that the other folks just didn't see anything happening around them, and here you had these hallucinations when you saw these.

Mayor WINTERSTELLA. Senator, I wasn't aware that they were not even acknowledging this kind of traffic off-shore. I'm sure if you take the time to visit with some of the recreational and commercial fishermen in New Jersey they'll more than testify that there are a number of these barges that supposedly are never there.

Senator LAUTENBERG. We're going to try to do that. We're going to try to hold a hearing down there and invite people who are on the water rather than in the offices spread around who don't have an appropriate pair of binoculars to look down.

Mr. McCann, would you testify next?

STATEMENT OF GEORGE McCANN, DIRECTOR, DIVISION OF WATER RESOURCES, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. McCANN. Thank you, Senator.

My name is George McCann, and I am the Director of the Division of Water Resources for the New Jersey Department of Environmental Protection. I'm happy to speak today regarding the Shore Protection Act of 1987, as sponsored by yourself and Senator Bradley.

As I know you are aware, and we've heard discussion about it earlier today, the coastline of New Jersey was the victim of garbage wash-ups twice during this past summer—extensive garbage wash-ups. It is a problem that is persistent, and there were two incidents that were of particular note. One of those incidents—the more notable—in August, resulted in the disposal of medical wastes along those beaches.

These incidents, in our opinion, are from indiscriminate solid waste management and disposal practices. It should not be the responsibility of the State of New Jersey residents to have to pay for the disposal and correction and cleaning of that waste material as it affects our beaches. This material simply does not belong in the waters and the oceans surrounding our State or any other State in this country.

There was talk earlier today about this being a local problem. I would hardly suggest that it's a localized problem. I know personally I receive numerous letters from residents of States throughout this country who visit the New Jersey shore and are appalled by what they have read in the newspapers and what they have personally observed when they come to the shore. I think this type of legislation would have very strong support throughout the country because the shore represents a rather unique place for a lot of people, not just New Jersey residents.

I am sure you are also aware of the extensive investigations that we have underway in New Jersey by the Attorney General's Office, our own department, and in conjunction with EPA to determine the source of these floatable materials, most specifically looking at the August incident. We continue to be optimistic that we will find those responsible and will punish them to the full extent of the law. A resolve to find those responsible should be a clear signal to all who would consider such illegal activities that we will not tolerate this type of abuse.

For these reasons the New Jersey Department of Environmental Protection strongly supports this legislation in Senate Bill 1751 which would improve the controls on vessel transport of commercial and municipal solid waste.

We also would make some suggestions and recommendations, which I think would even strengthen that to deal with the question of the transfer stations themselves. We would offer that a registration and permitting of the transfer at the marine transfer stations where the waste is off-loaded and on-loaded would further strengthen the proposal of licensing and permitting vessels.

We would also suggest that all of the permittees be required to submit, for the approval of the EPA, and Operation and Maintenance Manual which would outline the specific procedures which were used to prevent any spillage, to report a spill if one occurs, how they could clean up the spill, and to outline the loading and off-loading procedures used at each one of the facilities.

Additionally, these transfer stations could provide monthly reports to the EPA documenting their operations, any spillages that did occur, and the clean-up measures which were employed, as well as the documentation related to the quantities of material that were off-loaded.

Additionally, under title IV of the act regarding enforcement, we would suggest that the clear indication of the responsible agency for monitoring and enforcement of the legislation be clearly identified, and that they be assured of having the necessary resources committed to this legislation. We've seen in the past the issue of responsibility of EPA versus the Coast Guard in the New York Harbor and New Jersey shore area. It is very questionable as to who is going to take the action. It is my understanding that it's based upon referrals of the Coast Guard to the EPA, and in checking the records we see only one such violation acted on since the existence of the EPA. So over 15 years, only one such violation received any type of action, and it was a result of some illegal discharge of beer which was disposed of in support of materials that were confiscated by the Federal Government.

Finally, the other point we'd like to raise about transfer stations is that they should also be, as part of the permitting process, included in the manifesting so that they can confirm for those vessels the amount of material. As opposed to being just a signatory on the manifest system, that a part of their responsibilities is a confirmation of the quantities, either by volume or weight, that the vessel operator would suggest that he is disposing of and that he has taken from the previous station.

Finally, I would just like to thank you for the opportunity to testify today and say that we support this legislation very strongly, as well as others you have sponsored related to the ocean like your Plastic Pollution Act of 1987, and applaud your continued support for the ratification of the MARPOL Annex 5.

If you have any questions, I would be happy to answer them.

Senator LAUTENBERG. Thank you, Mr. McCann.

I'd suggest that vigorous enforcement certainly is there. You say there has been one referral in 15 years. It sounds like they're catching up with it, it just takes a little time.

Ms. Lentz.

STATEMENT OF SALLY ANN LENTZ, STAFF ATTORNEY, OCEANIC SOCIETY, WASHINGTON, DC

Ms. LENTZ. Thank you, Mr. Chairman.

I'm Sally Lentz, Staff Attorney with the Oceanic Society. We're a 40,000 member, non-profit, national organization devoted to the protection, conservation, and wise use of ocean and coastal resources.

I'm pleased to be here today on behalf of not only the Oceanic Society, but also the American Littoral Society, Clean Ocean Action, and the New Jersey Environmental Federation in support of the Shore Protection Act of 1987.

Marine researchers, you will be appalled to know, estimate that the amount of garbage placed in the ocean each year now outweighs the fish harvest by three to one.

Problems caused by marine debris, particularly plastics, have resulted in growing public concern. Mounting evidence demonstrates that large numbers of marine mammals, birds, turtles, and commercially important fisheries are lost as a result of entanglement in and ingestion of plastic materials.

But the problem is not limited to wildlife concerns; neither is it limited to plastics. There are other major environmental, economic, and health consequences of ocean dumping of garbage—both plastic and non-plastic.

Marine debris destroys our shoreline amenities, and the adverse impact on aesthetics translates into real dollar losses for coastal communities that depend on tourism. There may be economic loss for fishing interests as well, due to contamination of near-shore habitats. Moreover, the closure of beaches and public advisories in New Jersey and elsewhere reflects the findings of public authorities that the presence of bacteria and viruses at bathing beaches from waste dumping in our coastal waters jeopardizes human health.

The price is very high if you consider the cost of clean-up, as well. On clean-up alone, Texas coastal communities spend in excess of $14 million annually just for picking up garbage from the beaches.

This summer the wholesale use of the ocean as a garbage dump for industrial waste, sewage sludge, and illegally discarded trash started to catch up with us, and the State of New Jersey, as we heard earlier today, suffered the consequences.

Events of this summer should have come as no surprise to EPA officials, and I was surprised to hear their testimony today because in 1985 they identified barge waste disposal as a major contributor to environmental problems in near-coastal waters of Region II, linking such disposal to toxic contamination, pathogen contamination, habitat loss, and changes in living resources in that region. However, New Jersey does not face this problem alone. The degradation of our beaches from marine debris is a Nation-wide problem, resulting in large-scale public and private clean-up efforts.

Although beach clean-up efforts are an important and necessary response to the problem, a more effective approach is to attack the problem at its source. Stated simply, we must no longer use our ocean as a garbage bin.

The marine debris problem is attributed not only to dumping of municipal waste and ship-generated garbage, but also to the discharge of materials via inland waterways and outfalls. Efforts, as you know—thanks to you—are well under way to regulate the discharge of ship-generated garbage through proposed domestic legislation, and we are anxiously awaiting advice and consent of Senate ratification of Annex V of MARPOL.

However, these initiatives do not address the source of marine debris at issue today: the illegal dumping of municipal waste and the inadequate transport of that waste at sea.

S. 1751 provides a sound statutory basis for regulating the transport of garbage at sea. Under current law, the transport of garbage for the purpose of dumping is regulated under the Ocean Dumping Act. However, the Ocean Dumping Act does not regulate the transportation of garbage at sea for eventual land-based disposal, nor does it establish effective enforcement mechanisms, obviously.

S. 1751 fills the regulatory gap. A provision that all garbage-hauling vessels be required to register for a vessel identification number, coupled with a requirement that a manifest accompany each shipment, provides the basis for enforcement authorities to determine that a violation has occurred.

We also strongly support section 301 that institutes waste handling requirements. Careful handling of waste at port facilities and proper securing of the waste for transport contribute significantly to preventing garbage from entering the sea.

However, H.R. 1751 should be viewed in the broader context of waste management. The U.S. approach to managing waste is at a critical turning point. Despite efforts to replace old waste management practices with new and better solutions, there exists no comprehensive, national strategy for managing waste. Without an overall strategy we can expect to continue to direct waste streams to the most convenient disposal method, rather than those which will result in the least environmental burden.

As we begin to redress the mistakes of the past by restricting the use of landfills, there is increasing pressure to turn to the ocean to dispose of waste—not only municipal waste, but sewage sludge, industrial waste, and dredge spoils. We must—and we can—take the necessary steps to solve this problem. However, if the shores of New Jersey and other coastal communities across the Nation are to be saved, we must confront all these sources of waste with equal conviction, and we must act quickly.

The Oceanic Society, the American Littoral Society, Clean Ocean Action, and the New Jersey Environmental Federation, and others in the environmental community appreciate greatly the leadership role that you, Senator Lautenberg, and Senator Bradley, and these subcommittees are taking to halt the contamination of our vital ocean and coastal resources. We look forward to working with you to achieve this objective.

Senator LAUTENBERG. Thank you.

Mr. Mandelbaum.

STATEMENT OF DAVID MANDELBAUM, BALLARD, SPAHR, ANDREWS & INGERSOLL, REPRESENTING SAVE OUR SHORES, ACCOMPANIED BY CHRISTINE REUTHER

Mr. MANDELBAUM. Thank you, Mr. Chairman.

My name is David Mandelbaum. I am here today with my colleague, Christine Reuther. We are attorneys in the Philadelphia office of a law firm known as Ballard, Spahr, Andrews & Ingersoll, and we are here representing our client Save Our Shores, which was referred to before.

Save Our Shores is a New Jersey, non-profit corporation. It's an environmental group initially formed by three physicians, a dentist, and an attorney who were initially, primarily concerned with the health effects of ocean pollution along the New Jersey beaches.

We appreciate the opportunity to present comments on this bill, which Save Our Shores and I, personally, strongly support, and we've done so in written comments which are more extensive than I think it would be appropriate to go into today.

In my view, and in Save Our Shores' view, the approach taken by Senate Bill 1751 is the only sensible way to address the particular problem which it addresses: releases or disposal of waste from ocean transportation. I agree completely with Mr. Denit that if waste is dumped in the ocean it is a violation of existing law. The problem is discovering a violation of existing law. It is obvious from the testimony given by the gentleman from the Coast Guard and from Mr. Denit that the Environmental Protection Agency and the Coast Guard are not able to discover disposal of waste promptly and cheaply when it is done in the ocean.

A manifest system provides two benefits. First, for transporters of waste who are obeying the law we will have a manifest system under which a waste source facility will fill out a manifest with the vessel operator and verify the amount of waste on a vessel, and that manifest must be matched with a manifest at the time of unloading. So for legal operators we have a system of matching loading with unloading. For illegal operators, for people who one might characterize as "midnight dumpers," we do not have to observe midnight dumping. All we have to observe is a vessel at sea without a manifest. A vessel at sea without a manifest will be in violation, and that's someone who should not be out there at all.

Now, having said that I think that Senate 1751 is a bill which should be passed in any form, we have some substantial suggestions for modifications to the bill which we believe would greatly strengthen it and enhance its ability to achieve its objectives.

The first principal area of modification that we would like to see is some strengthening of the manifest system. As Mr. Denit mentioned, the present bill does not include a provision for exception reporting. Exception reporting is a notion taken from the regulations under subtitle C of the Resource Conservation Recovery Act which govern generation, transportation, and treatment, storage, and disposal of hazardous wastes. Under that system, hazardous waste is accompanied by a manifest from the generator—analogous to the waste source facility—with the transporter to a waste disposal facility--treatment, storage, or disposal facility.

The manifest then must be returned to the generator. If the generator does not receive a completed manifest within a specified period from the time of shipment, that generator must report that exception to either EPA or a State. That sort of system should be implemented in this bill. In order to do that there must be a requirement that the manifest be returned to the waste source facility.

That will provide two checks. First, a completed manifest will be returned to EPA and can be matched with manifests at the time of loading, but that's a lot of paper for EPA to be managing, and EPA would have to be attending closely to that flow of paper to catch mistakes promptly. Exceptions would then be flagged by waste source facilities which intended to comply with the law. In that second check, where the returned manifest would have to go the waste source facility, that would be exception reporting.

The second area of substantial modification that we would like to see is an extension of the enforcement and penalty provisions of the bill. At present the bill requires, in general, $5,000 penalties for violations. If this bill is to have enforcement teeth it must have an authorization for EPA to issue administrative orders to require compliance.

It should have penalties which can result in very large amounts. Now, virtually every environmental statute of the United States has very large penalty amounts on a daily basis. These penalty amounts have a certain in terrorem effect. In practice, the agencies do not assess the maximum amount, but the agency should have the authority to assess penalties of substantial amount so as to deter violations.

The bill should include a citizen suit provision. The citizen suit provision allows parties other than the United States to enforce the bill. Those parties can include municipalities, States, private persons, and environmental groups like Save Our Shores.

Finally, it ought to have a liability provision so that the cost of clean-up could be assessed against vessel operators who are responsible for this particularly hazardous method of transporting solid waste over the ocean.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you, Mr. Mandelbaum.

Thank you all for the excellent testimony that you gave, not simply because we agree with one another, but because it's almost incomprehensible that awareness of the problem to the EPA and the Coast Guard is almost non-existent. We hear them complaining about the fact that there is law there to take care of it, and all it needs is additional enforcement, step up the pace, Mr. McCann, from one every 15 years—maybe triple that rate and really get on with it, do one every 5 years. I don't want to ridicule their efforts too much, but we are looking at a situation where we're being inundated with this stuff, where people see it with their own eyes, it's coming from some place.

The suggestion that the cost of keeping a manifest is going to be prohibitive or complicated is nonsense. I mean, what would it cost to keep a manifest on what's taking place? We're talking about a few bucks. We can't be talking about much. To allow it to go by unpermitted simply because it hasn't been required in the past is the kind of argument that I get to suggest that no one's seen it so it can't happen. You have an excellent suggestion. If midnight dumpers get caught in the act, they can be subject to penalties under the existing law; but trying to catch a dumper in the act is pretty tough.

I had even proposed something equivalent to the old CAP—the Civil Air Patrol. There are lots of yachtsmen out there, and we could kind of give them some standing and some incentive to report those that they see dumping.

Off the coast of New Jersey and off of our whole Eastern coast there are a lot of pleasure boats out there who are annoyed by this kind of practice. So I think we could encourage them to report these violators and help us pursue the task.

What do you think it will take, Mayor, to restore the confidence and reputation of New Jersey's beaches?

Mayor WINTERSTELLA. Well, I think it's going to take a lot, Senator. As you know, I was reelected last night, and I was at my victory party, and I mentioned to them that I had to get up early and drive down here today, and I told them what I was going to do. Somebody from the background yelled out, "Yeah, I'm from the Federal Government, I'm here to help you," and everybody laughed. That's the attitude, unfortunately, on the Jersey shore.

We're just not on—I know it doesn't concern this particular bill, but on wood burning—I mean, we've got pieces of logs floating through our surf 12-feet long and 1-foot square. They're almost killing people. We've got debris. I sit here and I hear that this stuff isn't happening, and I know I've got to take two dump-truck loads of garbage off our beach every morning before people get to see it.

Senator LAUTENBERG. It must be your imagination, right?

Mayor WINTERSTELLA. Well, it's costing us a hell of a lot for imagination, then. It's a very expensive fairy tale.

Senator LAUTENBERG. That's terrible.

Mayor WINTERSTELLA. But we've got to do something. It's going to take a concentrated effort, and it has to be top to bottom. The newspapers are just killing us on the Jersey shore. I didn't get in to revenues because it's in my testimony, but revenues are off as much as 50 percent in the beach areas. People are just saying they're not coming back. What's the sense of coming back and paying several hundred dollars a week to have a beach-front home if you can't go swimming in the ocean?

Senator LAUTENBERG. That sure is not one that anybody's accusing the newspapers of exaggerating. What you see is what you get.

Why should State localities--that's not even worth the question. We've been through that exercise. You can't control it within one State, and you can't control it within one locality.

New Jersey has filed suit to enjoin New York City to construct barriers around its bay-front landfill. If the measures in the bill were already in place, especially the waste handling practices, is there a good chance that maybe we could have avoided the need for additional legal action? If they made sure that when they'd transfer that material it was protected we'd avoid the cost. Certainly the cost of keeping the manifest, permitting, the enforcement—everyone knows, it seems to me, that it's a lot easier to do the prevention rather than the cure, and if we had this law in place I think it would avoid the kind of thing that we're going through now—litigation, etc.—don't you?

Mr. McCANN. Mr. Chairman, if I may? A good example of that point; it might not be widely known, but the City of New York expends nearly $1 million each year to clean up the bridges of Woodbridge, New Jersey, which is directly opposite Fresh Kills Landfill on Staten Island, for the amount of material that is falling off barges either in transport or in the unloading operations.

Senator LAUTENBERG. Why do they do that? Is that a voluntary thing by them?

Mr. McCANN. Oh, not voluntarily at all. It was one of the first requirements that came out of the filing of the suit, which was originally initiated by Woodbridge because they had the direct impact on their beaches. So there is already that type of expense that is paid.

One needs only fly over Staten Island and the immediate beaches of New Jersey in the vicinity of Fresh Kills to see the large quantities of debris that are everywhere on those beaches, and as the tides change they wash out of the harbor and find their way around to the other portions of the New Jersey shore. So I think the expense is already being made by New York City, for example, in almost $1 million dollars a year cleaning up the problem rather than preventing it.

Senator LAUTENBERG. The difference is that each of us does not see the cost directly that a beach-front community has unless you're part of that community, whether you see it in increased taxes or increased beach fees, or what have you. But we all pay a price for it one way or the other. Heaven forbid that this should continue to impact the New Jersey coast. We'll have an economic disaster on our hands.

It is something that, unless we talk about it, we're not going to get to it. The more that we talk about it the more we raise the threat. I'm determined, as your United States Senator who sits on this committee, who chairs a Subcommittee on Environmental Legislation Oversight, I have the responsibility of seeing that all environmental law is observed, monitored, and enforced. We're going to take very harsh action on that.

When I hear the Coast Guard and EPA dismiss it almost casually as a problem that isn't really there, frankly, it makes my pulse beat a little bit faster and tells me that we've got to get on to creating new law and making sure that law is enforced. Everyone understands and approves it when we chase a drug smuggler. I'm sure that if you ask people who know the New Jersey shore, and shore communities across our coastline, whether they'd be willing to pay something or to at least reduce their direct costs by having these things dealt with up front, I assure you that we'd have their full support. So we're going to continue to pursue it.

What else might we do? Mr. Mandelbaum, I appreciated your suggestions, and I want you to know that whatever you have—any of you—by way of recommendations to our legislation we'll be happy to receive. Cheryl Russell from my office does environmental work for me, and my committee staff would be happy to receive either written or oral recommendations that you might make.

What else can we do, would you think, to help protect our shores? We're not going to go through the whole list of things now, but do we, if we enforce these few things that are on the books, if we create this new legislation and get it into place do you think we'll have gone a long way towards solving our problem?

Mr. MANDELBAUM. Mr. Chairman, there's one issue which is not properly addressed, in my view, at all at the moment, and that is the ocean dumping of sludge which requires, as its predicate—that is getting sludge out of the ocean—a strict enforcement of the pretreatment requirements and taking seriously the requirement that ocean dumping be phased out. The present statutory scheme allows—or appears to allow—continued ocean dumping of sludge, as we know, from the extension from the 12-mile site to the 106-mile site, and that is a substantial quantity of material heavy in organics and metals. Indeed that is in the ocean largely because it has material in it that precludes land application. So that is one area which has to be addressed seriously.

Senator LAUTENBERG. You're probably aware that site is permitted until 1991, and I'm going to do my best to make sure that that permit doesn't get extended beyond that. I want to put all the communities on notice that they'd better think of ways of getting their "act," as they say, cleaned up and not think that we're going to sit by and just continue to use and abuse the ocean with that kind of dumping. We have to find another way to do it. We created it, and we've got to find a way to get rid of it.

Yes?

Mr. MCCANN. Mr. Chairman, I would agree wholeheartedly with Mr. Mandelbaum's remarks. This is perhaps just the beginning of several initiatives that this committee and you personally can take. The Ocean Dumping Act is considered to be an act that would protect the ocean. Unfortunately, we hear people more and more these days talking about increasing the use of the ocean for waste disposal, including hazardous waste disposal, and I would hope that you would be vigilant in ensuring that we continue to make progress in phasing out industrial waste dumping—we've made a great deal of progress in that area—and to keep your eye on other uses of the ocean; for example, ocean incineration of hazardous waste, which is something that EPA has been looking into quite vigorously and hopes to promote some time in the future. So I leave you with that.

Senator **Lautenberg**. Thank you. You know that we have a New York bite registration funding project now under way that—assuming that it gets through and gets signed into law—has several hundred thousand dollars—almost $1 million—available for a study on bite restoration, and including planning alternatives to sludge dumping at sea, including, in other legislation, a requirement that before any EPA permitting of ocean incineration is done that they have to certify that we are not going to further contaminate our environment. So the tests are out there, fortunately for all of you and your interest, and me and my interest in our State and in our environment.

I was an environmentalist before I came to the United States Senate. If you look on the rolls of the Sierra Club and Environmental Defense Fund, all of you will see Frank Lautenberg's contribution because I believe so deeply in it. I use the mountains and the streams, and I sail, and I know how precious our resources are. But there is now an awareness, as never before manifest, that we are in danger of destroying the very world in which we exist.

There is a conference now going on at Clark University—I saw in today's paper—of scientists trying to examine what's happening as we imbalance the various parts of our ecosystem, and the consequence of that is kind of scary. So we all have to fight back. The one that's easiest for us to deal with at the moment is the ocean contamination. We're just going to stop it. That's my commitment to you, and to me, and to my family.

I thank you all for being here and for giving us your valuable testimony. We will be looking to you for additional comment and support as time goes by, but we would ask you all to reach out to us in case you think there's something we ought to know.

Thank you very, very much all of you.

This Senate hearing is now adjourned.

[Whereupon, at 4:15 p.m. the subcommittee was adjourned.]

[Statements submitted for the record and the bill S. 1751 follow:]

TESTIMONY by CONGRESSMAN WILLIAM J. HUGHES
SENATE JOINT SUBCOMMITTEE HEARING ON ENVIRONMENTAL PROTECTION AND HAZARDOUS WASTES AND TOXIC SUBSTANCES
NOVEMBER 4, 1987

MR. CHAIRMAN, I AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY ON BEHALF OF S. 1751, SPONSORED BY YOURSELF, AND OUR DISTINGUISHED COLLEAGUE, SENATOR BILL BRADLEY. I URGE THE MEMBERS OF THIS COMMITTEE TO SUPPORT THIS LEGISLATION, WHICH WILL REQUIRE VESSELS TO MANIFEST THE TRANSPORT OF MUNICIPAL GARBAGE AND OTHER COMMERCIAL NONHAZARDOUS WASTE TO ENSURE THAT THESE WASTES ARE NOT ILLEGALLY DUMPED. AS YOU MAY KNOW, I, ALONG WITH CONGRESSMAN SAXTON, HAVE INTRODUCED COMPANION LEGISLATION IN THE HOUSE OF REPRESENTATIVES.

IT IS EVIDENT THAT ILLEGAL DUMPING HAS OCCURED IN THE PAST AND MAY BE CARRIED OUT QUITE EASILY WITHOUT THE IMPLEMENTATION OF A MANIFEST SYSTEM. IT IS BECOMING INCREASINGLY CLEAR THAT THE EVENTS OF THIS PAST SPRING AND SUMMER ARE THE RESULT OF ILLEGAL DUMPING ACTIVITIES. AS YOU ARE WELL AWARE, ALL KINDS OF UNSIGHTLY AND UNHEALTHY WASTE WASHED UP ALONG THE NEW JERSEY BEACHES. IN MAY, WE HAD A 20 MILE TRASH SLICK ALONG THE COAST MADE UP OF VARIOUS DEBRIS. IN JUNE, A SLICK OF SLUDGE CONTAINING FECAL MATTER AND OTHER WASTE CLOSED BEACHES IN OCEAN COUNTY WITH NO DETERMINATION OF ITS SOURCE. AUGUST BROUGHT US ANOTHER GARBAGE SLICK, THIS TIME STRETCHING ALONG 50 MILES OF OUR COAST AND CONTAINING TIMBER, HYPODERMIC NEEDLES, AND OTHER HOSPITAL WASTE. AGAIN, THE BEACHES WERE ORDERED CLOSED BECAUSE OF HEALTH RISKS AND STILL NO CLUE TO ITS SOURCE.

I VIEW THIS LEGISLATION AS PART OF A COMPREHENSIVE STRATEGY TO MANAGE OUR GARBAGE AND WASTE MORE EFFECTIVELY, THEREBY PROTECTING OUR ENVIRONMENT FROM UNNECESSARY DEGRADATION. SPECIFICALLY, S. 1751 WILL REQUIRE THE IDENTIFICATION OF ALL VESSELS THAT TRANSHIP WASTE, DREDGED MATERIAL, SAND, GRAVEL, OR DEBRIS OF ANY KIND. THE BILL WILL ALSO ESTABLISH A MANIFEST TRACKING SYSTEM THAT WILL INCLUDE SUCH PERTINENT INFORMATION AS THE WASTE'S SOURCE AND DESTINATION, THE VOLUME OF THE WASTE AT THE TIME OF LOADING, THE VOLUME OF THE WASTE DEPOSITED AT THE DISPOSAL FACILITY, AND THE GENERAL TYPE OF WASTE. THE MANIFEST FURTHER REQUIRES A DESCRIPTION OF THE WASTE CONTAINMENT MEASURES.

MOST IMPORTANTLY, THE BILL STRENGTHENS THE TRANSHIPMENT AND THE ON-LOADING AND OFF-LOADING PROTECTIVE PROCEDURES BY REQUIRING THAT THE MATERIAL IS PROPERLY SECURED SO THAT NO WASTE WILL BE DEPOSITED INTO THE WATER. THE LEGISLATION ALSO IMPOSES CIVIL AND CRIMINAL PENALTIES ON THOSE WHO VIOLATE ANY SECTION OF THE ACT, WITH THE AMOUNT DOUBLING FOR PERSISTENT OFFENDERS.

IF WE CAN PUT IN PLACE THE PROTECTIONS OF S. 1751 TO ENABLE US TO KEEP TRACK OF THE WASTE FROM THE GENERATOR TO THE PLACE OF FINAL DISPOSAL AND STEP UP OUR ENFORCEMENT ACTIVITIES, WE WILL MORE EFFECTIVELY ADDRESS THE PROBLEMS ASSOCIATED WITH WASTE DISPOSAL.

I URGE THE SUBCOMMITTEE TO ADOPT THIS IMPORTANT LEGISLATION.

THANK YOU.

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STATEMENT OF
REPRESENTATIVE H. JAMES SAXTON
BEFORE THE JOINT SUBCOMMITTEES ON
ENVIRONMENTAL PROTECTION & HAZARDOUS WASTES AND TOXIC SUBSTANCES
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
NOVEMBER 4, 1987

I MUST BEGIN, MR. CHAIRMAN, BY THANKING YOU FOR THE OPPORTUNITY TO BE HERE TODAY. BEFORE THIS HEARING IS OVER, I AM SURE THAT YOU, AND OTHER MEMBERS OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, WILL UNDERSTAND WHY IT IS SO IMPORTANT TO NEW JERSEY THAT CONSIDERATION BE GIVEN TO S. 1751, THE SHORE PROTECTION ACT OF 1987, INTRODUCED BY MY COLLEAGUE FROM NEW JERSEY SENATOR LAUTENBERG.

ON AUGUST 13TH A 50-MILE LONG SLICK OF BURNT TIMBERS, ROTTEN FOOD, AND MEDICAL WASTE, SUCH AS USED SYRINGES, WASHED ASHORE, CLOSING BEACHES FOR THREE TO FOUR DAYS. IT WAS ALARMING TO WATCH PEOPLE PICK UP SYRINGES ON LONG BEACH ISLAND, AND TO HEAR OF A YOUNG BOY HAVING A NEEDLE BECOME EMBEDDED IN HIS HAND WHILE PLAYING IN THE SURF. IT WAS EVEN MORE DISTRESSING TO FIND THAT THERE IS NO FEDERAL MECHANISM FOR THE TRACKING OF THIS DANGEROUS MATERIAL FROM THE POINT OF GENERATION TO THE POINT OF DISPOSAL.

INTERESTINGLY ENOUGH, THIS IS NOT JUST AN ENVIRONMENTAL PROBLEM, IT IS AN ECONOMIC ONE AS WELL. NEW JERSEY'S GREATEST RESOURCE IS THE SHORE, AND TOURISM IS OF UNMEASURABLE IMPORTANCE TO OUR STATE. THE SERIOUSNESS OF THE SITUATION HAS NOT ESCAPED THE ATTENTION OF OTHER ELECTED OFFICIALS IN NEW JERSEY.

SUBSEQUENTLY, THE SUBCOMMITTEE ON OCEANOGRAPHY, HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE, HELD A FIELD HEARING IN OCEAN CITY, NEW

JERSEY ON SEPTEMBER 8TH. THE HEARING FOCUSED ON COASTAL POLLUTION IN THE NEW YORK BIGHT AND MID-ATLANTIC AREAS.

AS A DIRECT RESULT OF THAT HEARING I INTRODUCED H.R. 3478, THE MEDICAL WASTE TRACKING ACT IF 1987, ALONG WITH MY COLLEAGUES FROM NEW JERSEY, MR. HUGHES AND MR. HOWARD. THIS LEGISLATION WOULD DIRECT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO CREATE A MANIFEST TRACKING SYSTEM FOR MEDICAL WASTE AND RAISE THE PENALTIES FOR THOSE WHO DUMP SUCH WASTE IN NAVIGABLE OR OCEAN WATERS.

I TAKE THIS OPPORTUNITY TO COMMEND THE SENATOR FROM NEW JERSEY, MR. LAUTENBERG, FOR INTRODUCING THE SHORE PROTECTION ACT OF 1987. YOU WILL BE PLEASED TO KNOW THAT MR. HUGHES AND I PLAN TO INTRODUCE A HOUSE COMPANION SHORTLY.

S. 1751 WOULD REQUIRE A TRIPLICATE MANIFEST FOR EACH SHIPMENT OF COMMERCIAL OR MUNICIPAL WASTE TRANSPORTED OVER WATER AND EACH VESSEL TO HAVE A DOCUMENTATION NUMBER. THIS WOULD HELP TO DETER ILLEGAL DUMPING.

S. 1751 ALSO REQUIRES THE DEVELOPMENT OF WASTE HANDLING PRACTICES TO MAKE THE ONLOADING AND OFFLOADING FACILITIES, AS WELL AS THE VESSEL OPERATOR, RESPONSIBLE FOR ENSURING THAT DEBRIS IS NOT DEPOSITED IN THE WATER DURING THE LOADING AND UNLOADING OF THE VESSEL. LAND-BASED WASTE SHIPPING AND DISPOSAL FACILITIES WOULD ALSO HAVE TO PROVIDE ADEQUATE MEASURES TO CLEAN UP ANY MATERIAL ACCIDENTALLY SPILLED INTO THE WATER.

I BELIEVE THIS IS A TOUGH, NO-NONSENSE WAY TO ADDRESS MANY OF THE CONCERNS THAT HAVE BEEN RAISED THIS SUMMER ABOUT WASTE IN GENERAL AND THE DUMPING OF THOSE WASTES IN THE OCEAN.

FOR THE FUTURE, I FEEL WE NEED TO BEGIN TO LOOK AT A COMPREHENSIVE PLAN FOR WASTE MANAGEMENT. IN NEW JERSEY, WE HAVE GONE BEYOND THE POINT OF BEING CONCERNED. AS MY COLLEAGUES FROM NEW JERSEY CAN ATTEST, WE HAVE THE SUPPORT OF A LARGE MAJORITY OF THE PUBLIC TO DO WHATEVER IS NECESSARY TO CLEAN UP THE OCEAN AND THE ENVIRONMENT. IT IS NOT TOO LATE TO WORK TOGETHER AND GIVE THE OCEAN AND OUR SHORELINE THE CHANCE IT DESERVES TO CURE ITSELF.

AGAIN, I THANK THE MEMBERS OF THE SUBCOMMITTEES FOR THEIR TIME AND ATTENTION.

THANK YOU VERY MUCH.

STATEMENT OF
JEFFREY DENIT
DEPUTY DIRECTOR
OFFICE OF SOLID WASTE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
AND THE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

November 4, 1987

Good afternoon Mr. Chairman and members of the Subcommittee. I am Jeffrey Denit, Deputy Director of the Office of Solid Waste at the U.S. Environmental Protection Agency (EPA). I am presenting this testimony on behalf of J. Winston Porter, EPA's Assistant Administrator for Solid Waste and Emergency Response. With me today is Tudor Davies, Director of the Office of Marine and Estuarine Protection; Lisa Friedman, Associate General Counsel for Solid Waste and Emergency Response; and, Susan Lepow, Associate General Counsel for Water. We appreciate the opportunity to be here today to discuss EPA's position on S. 1751, the "Shore Protection Act of 1987."

S. 1751, according to its title, is a bill to require vessels to manifest the transport of municipal or other non-hazardous commercial wastes transported offshore to ensure that these wastes are not illegally disposed of at sea. In essence, the bill would require vessels transporting RCRA Subtitle D wastes to obtain a vessel identification number from EPA and to comply with a manifest system intended to track the wastes from the point of loading through disposal. In addition, the bill would require the owner/operator of the waste source facility and the owner/operator of the disposal facility to ensure the the waste material is properly loaded onto and unloaded from the vessel which transports the waste. Finally, the bill would require EPA and the Coast Guard to conduct studies to evaluate systems for surveillance or tracking of vessels transporting Subtitle D wastes. S. 1751 would apply to vessels in inland waters and out to the end of the 200-mile Exclusive Economic Zone.

EPA believes that S. 1751 offers a federal solution to a problem which may occur only in isolated instances, and affects only localized areas. To the extent that municipal waste is dumped into ocean or inland waters during the transportation of these wastes, a violation of existing U.S. law has occurred. The Federal Water Pollution Control Act (FWPCA) and the Rivers and Harbors Act of 1899 (The Refuse Act) prohibit the disposal of such waste in the inland and territorial waters of the United States. In addition, the Marine Protection, Research and Sanctuaries Act (MPRSA) prohibits the transportation of materials for the purpose of ocean dumping except as may be authorized by a permit issued under the Act. Therefore, enactment of this legislation would create a duplicative regulatory program.

Neither the EPA nor the Coast Guard is aware of any evidence to suggest that the problem being addressed by this bill is either wide-spread or of such national concern as to warrant a national manifest system for vessels transportating municipal waste. Furthermore, if the illegal ocean dumping of municipal waste were found to be a national problem, it is likely that a more workable solution would involve enhancement of enforcement activities under existing law rather than the creation of an entirely new mechanism.

Specific Concerns with S. 1751

In addition to our major, overall concern with the "Shore Protection Act"--that it addresses, on the federal level, a symptom of a problem which is more rightfully the concern of State and local governments--EPA would like to note some other problems with the bill.

We note that the vessel identification number required under Title I and manifest requirements set forth in Title II of the bill apply to vessels which transport municipal or commercial wastes regardless of the purpose of the transportation. Thus, the bill seem to reach not only vessel transport of wastes for ultimate land-disposal, but also transportation for purposes of ocean dumping. As mentioned earlier in my testimony, the MPRSA already prohibits the transportation of materials for the purpose of ocean dumping except as may be authorized by a permit issued under that statute. While EPA has not issued any permits allowing the ocean dumping of municipal trash or garbage, because of the broad manner in which the bill is drafted, it would seem to apply to activities already subject to regulation under the MPRSA. Although Sec. 801(a) of the bill provides that it does not supercede or preempt any other laws, the bill does not specificallly address whether its provisions are to be applied in addition to other existing statutory requirements. In particular, the bill does not specify whether vessels with valid MPRSA ocean dumping permits are additionally subject to the vessel identification number and manifest requirements.

We also note that the definition of "vessel" in section 101 (8) specifically refers to the transport of dredged material. The responsibility for permitting ocean dumping of dredged material lies with the U.S. Army Corps of Engineers under section 103 of the MPRSA. Since dredged material is only referred to in the bill's definition of "vessel", it is not clear to us whether the bill is meant to apply to dredged material disposal.

The timeframes suggested in this bill are unrealistic. The 180 days to call in all permits to be issued under this bill is extremely ambitious; it would not allow time for EPA to develop a program, permit standards, or regulations. Likewise, the 30-day deadline for EPA to issue each individual permit is too short.

There is one last item which I would like to mention about S. 1751. Section 201(d) of the bill would require that the owner/operator of a disposal facility to send in manifests on a weekly basis. This is more frequent than what is required for hazardous wastes. More importantly, there should be an exception reporting system to flag those instances where the waste never reached the disposal facility.

This concludes my prepared statement. I would be happy to address any questions which you may have at this time.

Senate Hearing - Senate Bill 1751
The Shore Protection Act of 1987
November 4, 1987
Washington, DC

Testimony of George G. McCann
Director of the Division of Water Resources
New Jersey Department of Environmental Protection

Thank you for the opportunity to speak at this hearing on this important topic.

As I am sure you are aware, Senator, the New Jersey coastline was the victim of garbage wash-ups twice during our summer season. These incidents resulted from indiscriminate solid waste management and disposal practices. At least once, the garbage and "floatables" that arrived on our beaches included medical wastes - an outrage to our coastal residents and those who vacation along our beaches. The State of New Jersey expended considerable resources towards the monitoring surveillance, investigation, and cleanup of garbage slicks in our coastal waters this summer.

This is a cost that the residents of New Jersey should not have to bear. Waste of this type should not be in our water.

No doubt you are also aware of the investigations underway by the New Jersey Attorney General, DEP and EPA on the matter of floatable debris from the incidents this summer. We continue to be optimistic that we will find those responsible and will punish them to the full extent of the law. Our resolve to find those responsible should be a clear signal to all who would consider such illegal acts that we will not tolerate this abuse.

For these reasons the New Jersey Department of Environmental Protection supports strong legislation like S.1751 that would improve the controls on vessel transport of commercial and municipal solid waste. We feel that this is an area with too few existing controls.

Our detailed recommendations on the bill are as follows:

1. As part of the registration and permitting process, the transfer stations where waste is off-loaded and/or received should be required to register and obtain a permit.
2. All permittees should be required to submit, for EPA approval, an Operations and Maintenance Manual which outlines the specific procedures used to prevent spillage, to report a spill, to clean-up a spill and to outline loading and off-loading procedures. Additionally, monthly reports should be required to be filed with EPA documenting operations, any spillages, and clean-up measures that were employed during the reporting period.
3. Under Title IV, it would be advisable to designate one enforcement lead agency rather than having the responsibilities shared by the Administrator of EPA, the Secretary of Commerce

and the Secretary of the Department in which the Coast Guard is operating. With one designation for the enforcement lead, there will be no question of who has this responsibility.

4. In order to track the waste flow, it is recommended that either the volume or weight of waste being hauled be reported at the point where it is loaded into the vessel and at the point where it is off-loaded. This procedure could be made part of the manifesting system.

Thank you for the opportunity to testify on this important matter. We support this legislation as others which you have sponsored like the "Plastic Pollution Act of 1987", Senate Bill 633 and encourage your continued support for the ratification of the MARPOL Annex 5.

I would be happy to answer any questions you may have at this time.

THE OCEANIC SOCIETY

EDUCATION • RESEARCH • CONSERVATION

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November 4, 1987

Statement of Sally Ann Lentz
On Behalf of
The Oceanic Society, American Littoral Society,
Clean Ocean Action and New Jersey Environmental Federation
Before the
Senate Committee on Environment and Public Works
Subcommittee on Environmental Protection
and
Subcommittee on Hazardous Wastes and Toxic Substances
Concerning
The Shore Protection Act, S. 1751

I am Sally Ann Lentz, Staff Attorney with the Oceanic Society. The Society is a 40,000 member non-profit organization devoted to the protection, conservation and wise use of marine and coastal resources. In all of our activities we are dedicated to protecting the oceans for the people and wildlife that depend upon them for life, livelihood and enjoyment. I appreciate the opportunity to testify on behalf of the Oceanic Society, American Littoral Society, Clean Ocean Action, and the New Jersey Environmental Federation on S. 1751 regarding the transport of municipal and other nonhazardous waste at sea.

The Oceanic Society has long been concerned with the marine environmental consequences associated with uses of our oceans and coastal areas. During the nearly two decades since its founding, we have conducted a wide range of scientific and technical research, education and public policy programs in our continuing effort to focus the attention of decision makers and resource managers on the need for information-based marine policies.

The oceans, though vast and covering over 70 percent of the earth, are a vulnerable and complex environment. Numerous unique and important species live in or depend upon the oceans. Too often, however, our ocean and coastal resources are mismanaged due to narrow, short range special interests, with inadequate scientific understanding of the consequences. We have seriously damaged some of our coastal waters, where marine life is more plentiful. Much less is known about long-term threats to the deeper oceans, but there are strong signs of damage there, too.

In 1985, the Environmental Protection Agency initiated its "Near Coastal Waters (NCW) Strategic Planning Initiative," a multi-year effort to maintain and enhance near coastal water environmental quality. As the first stage of the NCW initiative, EPA's Office of Marine and Estuarine Protection released a

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"Strategic Options Paper" in August, 1986.[1] The findings of that paper substantiate the urgent situation we are facing. Quoting from the paper's introduction:[2]

> Degradation of the near coastal water environment has become a critical national problem. The ecological, economic, recreational and aesthetic integrity of near coastal waters systems in the United States is threatened daily by the cumulative impacts of a multitude of activities within the coastal drainage basins, in the near coastal waters, and on the ocean. Portions of near coastal water and shore habitats in every geographic region of the country (1) and in every coastal state (2) have been found to be degraded to a moderate or severe degree.
>
> Continuing increases in year-round and seasonal coastal populations are adding pressures to near coastal water ecosystems already stressed by multiple uses and demands. As near coastal water environments become degraded, less of the resources are available for use by more people. There are adverse impacts to fisheries, outdoor recreation, and human health, as well as secondary impacts on tourism and property values.

Given this serious and growing problem, policies affecting the future of the ocean and its resources must be developed with environmental consequences as a primary consideration. They must be set with appropriate respect for the linkages in the ecosystem. An ecological ethic is essential in order to ensure the protection, conservation and wise use of our vital marine resources. It is in this context that transportation of garbage at sea must be considered.

It has been estimated that approximately 14 billion pounds of trash are discarded at sea every year. Marine researchers estimate that the amount of garbage placed in the ocean each year now outweighs the fish harvest by three to one.[3]

As reported by the Secretariat of the London Dumping Convention, the Workshop on the Fate and Impact of Marine Debris held from 27 to 29 November, 1984, in Honolulu, Hawaii concluded that "there is ample evidence that debris of both terrestrial and shipborne origin are widespread in the marine environment," and "substantial qualitative evidence indicates these interactions are contributing to increased mortality over that resulting from natural causes."[4] The workshop recommended that the problem be addressed through measures aimed at education, collection of information and mitigation.

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[1]. Office of Marine and Estuarine Protection, U.S. Environmental Protection Agency, "Near Coastal Waters Strategic Options Paper," August 12, 1986.

[2]. _Id_. at I-1.

[3]. Ten years ago, the National Academy of Sciences estimated that 6.5 million metric tons of litter were dumped into the world's oceans each year -- almost three times the weight of the entire United States commercial fish catch in 1985.

Problems caused by marine debris, particularly plastics and other persistent synthetic materials (including fishing nets) in the marine environment have resulted in growing public concern. Mounting evidence continues to demonstrate that large numbers of marine mammals, birds, turtles and commercially important fisheries are lost as a result of entanglement in and ingestion of plastic materials.[5] Lost and discarded fishing nets result in inadvertent destruction of living marine resources.[6] In addition, plastic bags, plastic spherules,[7] and plastic packing straps and rings contribute significantly to the problem.

But the problem is not limited to wildlife concerns. Nor is it limited to plastics. There are other major environmental, economic, and health consequences as well. The deluge of garbage destroys shoreline amenities. And the adverse impact on esthetics translates into real dollar losses for coastal communities that depend on tourism as a major industry. There may be economic loss for fishing interests as well, due to contamination of near shore habitats. Moreover, the closure of beaches and public advisories, in New Jersey and elsewhere, reflects the findings of public authorities that the presence of bacteria and viruses at bathing beaches from waste dumping in our coastal waters jeopardizes human health.

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[4]. "Environmental Hazards Caused by the Loss or Disposal at Sea of Fishing Nets and Other Marine Debris," Note by the Secretariat, LDC9/INF.4, 15 July 1985.

[5]. See, e.g., Wolfe. Douglas, Guest Editor, "Plastics in the Sea," Selected Papers From the Sixth International Ocean Disposal Symposium, Marine Pollution Bulletin, Volume 18, Number 6B, June 1987; United Nations Food and Agricultural Organization, Committee on Fisheries, Sixteenth Session, "Protection of Living Resources From Entanglement in Fishing Nets and Debris," published by the Marine Environment Protection Committee, International Maritime Organization, MEPC25/INF.3, June 4, 1987.

[6]. Degange, A.R. & Newby, T.C., "Mortality of seabirds and fish in a lost salmon driftnet," 11 Marine Pollution Bulletin 322-323 (1984); Eisenbud, R., The Pelagic Driftnet. FAO World Conference on Fisheries Management and Development, 27 June - 6 July (1984); Greenpeace, "Driftnets," Ocean Ecology Series, Fall (1985); Hammond, C., "Derelict gill net reported to National Marine Fisheries Service, Alaska Region in 1983," Workshop on the fate and impact of marine debris, 26-29 November (1984); High, W.L., "Some consequences of lost fishing gear," Workshop on the fate and impact of marine debris, 26-29 November (1984).

[7]. Carpenter, E.J. & Smith, J.L. Jr., "Polystyrene spherules in coastal waters," Science 178 749-750 (1972).

The cost associated with this problem is very high when you consider the cost of clean-up as well as the loss in tourist trade, the adverse impact on fishery habitat and illness for some who do risk swimming in polluted waters. For clean up alone, Texas coastal cities and counties currently spend in excess of $14 million annually just for picking up garbage from the beaches.

This summer, the wholesale use of the ocean as a garbage dump for industrial waste, sewage sludge and illegally discarded trash started to catch up with us, and the State of New Jersey suffered the consequences. A garbage slick containing hypodermic needles, bloody syringes, and drug vials washed up on more than 100 miles of New Jersey beachfront. In addition to the garbage slick, the beaches were fouled by tar balls from an oil spill, the bodies of dolphins killed by a mysterious virus, brown tides from dying algae and logs that fell off wood burning barges.

Indeed, EPA's NCW Options Paper identifies barge waste disposal as a major contributor to environmental problems in near coastal waters of Region II -- linking such disposal to toxic contamination, pathogen contamination, habitat loss, and changes in living resources in that Region.[8]

However, New Jersey does not face this problem alone.

The degradation of our beaches from marine debris is a nationwide problem, resulting in large scale public and private clean up efforts. Last month, a national beach clean up, covering 1,811 miles of shoreline, involving over 23,000 citizens in 16 states, yielded 670.6 tons of debris. In Oregon, with 360 miles of shoreline, volunteers collected 14 tons of trash in three hours in this year's annual beach cleanup. In a similar effort last year in California, 60 tons of trash was collected over a 300 mile stretch in just one morning. With 430 miles of coastline, the State of Rhode Island has been a pioneer in in clean up efforts. The State's Parks and Recreation Service recently invested $40,000 in a huge tractor-like beach cleaner and has begun a daily beach clean up program this past summer.

Although beach clean up efforts are an important and necessary response to the current problem, a more effective approach is to attack the problem at its source. Stated simply, we must no longer use our ocean as a garbage bin.

The marine debris problem is attributed not only to dumping of municipal waste and ship-generated garbage, but also to the discharge of materials "via inland waterways and outfalls from plants that manufacture plastic."[9] Efforts are well underway to regulate the discharge of ship-generated garbage, through domestic legislation (H.R. 940, S.535, and S. 633) and we are anxiously awaiting advice and consent of the Senate on ratification of Annex V of MARPOL.[10] However these initiatives do not address the source of marine debris at issue today -- the illegal dumping of municipal waste and the inadequate transport of that waste at sea.

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[8] NCW Paper, supra, Table 2, at I-14.

[9] Wehle, D.H.S. and F.C. Coleman, "Plastics at Sea," 2 Natural History 20 (1983).

S. 1751 provides a sound statutory basis for regulating the transport of garbage at sea. Under current law, the transport of garbage at sea for the purpose of dumping is regulated under the Marine Protection Research and Sanctuaries Act (MPRSA), 33 U.S.C. 1401 et seq. However, the MPRSA does not regulate the transportation of garbage at sea for eventual land-based disposal. Nor does the MPRSA establish effective enforcement mechanisms to assist public authorities in identifying ocean dumping violations. S. 1751 fills this regulatory gap.

A provision that all garbage hauling vessels be required to register for a vessel identification number (Section 102), coupled with a requirement that a manifest accompany each shipment of garbage (Section 201), provides the basis for enforcement authorities to determine that a violation has occurred, without placing an undue burden on the waste hauler. We recognize that the Coast Guard continues to carry an enormous workload without the necessary resources to perform all of its obligations as effectively as is desirable. We view this legislation as providing the means to better assist the Coast Guard in carrying out its duty to protect the marine environment from pollution. Currently, if garbage is dumped at sea, unless the event is witnessed by a third party, the Coast Guard has no basis for pursuing potential violators. An identification scheme, and a manifest system would provide information critical to identifying the polluter.

We strongly support Section 301 of H.R. 1751 that institutes waste handling requirements. Seven hundred tons of trash is received each day at Fresh Kill landfill on Staten Island.[11] The trash is transported to the landfill via barges. Absent a tarp or other containment device, the lighter weight items of garbage are often blown into the water. It has been reported that much of the garbage escapes into the water during loading and unloading as well.[12] Careful loading and unloading of waste at port facilities and proper securing of the waste for transport contribute significantly to preventing garbage from entering the sea. In addition, such requirements foster recognition that municipal waste is not "harmless", that it should be taken seriously, and that its improper disposal has serious consequences.

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[10]. Recognizing the problem of plastic marine debris is an international one requiring international solutions, we note that the United States currently has an opportunity to play an instrumental role in influencing international regulation of the problem of plastics in the marine environment. United States ratification of Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) would constitute an important step toward achieving that goal. Ratification and entry into force of Annex V would serve as a global "common denominator," while at the same time focusing attention on special concerns that merit stricter controls and other measures under supplemental U.S. law.

[11]. Center For Environmental Education, "Plastics in the Ocean: More Than A Litter Problem," February, 1987, at 29.

However, H.R. 1751 should be viewed in the broader context of waste management. The United States' approach to managing hazardous and nonhazardous waste is at a critical turning point. Mounting evidence of groundwater contamination and other problems associated with leakage of wastes from the ever-increasing list of Superfund sites has lent a new sense of urgency to finding new approaches to old practices, such as landfilling. In 1984, amendments were made to existing law that responded to the growing recognition that the methods used in the past to dispose of hazardous wastes should no longer be used. To replace the old practices, Congress has called for the development of environmentally sound methods for disposing of, treating, destroying, and recycling hazardous waste, and for reducing their generation.[13]

Despite these efforts, there exists no comprehensive, national strategy for managing waste. Decision makers, both in government and industry, continue to grapple with how best to achieve the goal of sound waste management. Without an overall strategy, however, we can expect the fragmented structure of the laws governing waste management to continue to direct waste streams to the most convenient disposal method, rather than those which will result in the least environmental burden.

In a widely accepted hierarchy of hazardous waste management, disposal of waste -- whether on land or at sea is the least preferred option. Source reduction must be the ultimate goal. Recycling and recovery provide a second line of defense. Treatment of waste is a third tier approach.

As we begin to redress the mistakes of the past in hazardous waste management by restricting the use of landfills, there is increasing pressure to turn to the ocean to dispose of our waste -- not only municipal waste, but sewage sludge, industrial waste, and dredge spoils. Contrary to the misguided philosophy of some decision makers in government and industry, the oceans are not the "out of sight, out of mind" solution to this serious and growing problem.

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[12] Id.

[13] See, e.g., Office of Technology Assessment, "Serious Reduction of Hazardous Waste," OTA-ITE-317, Washington, D.C., U.S. Government Printing Office, September 1986; Office of Technology Assessment, "Wastes in the Marine Environment," OTA-O-334, Washington, D.C., U.S. Government Printing Office, April 1987, pp. 47-49; and The Keystone Center, "Keystone Ocean Project: A Decisionmaking Process for Evaluating the Use of the Oceans in Hazardous Waste Management," 1987.

We must, and we can, take the necessary steps to solve this problem. However, if the shores of New Jersey and other coastal communities across the nation are to be saved, we must confront all sources of waste and we must act quickly. The Oceanic Society, American Littoral Society, Clean Ocean Action, the New Jersey Environmental Federation, and others in the environmental community appreciate greatly the leadership role that you, Senator Lautenberg, Senator Bradley, and these Subcommittees are taking to halt the contamination of our vital ocean and coastal resources. We look forward to working with you to achieve this objective.

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BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEES ON ENVIRONMENTAL PROTECTION
and HAZARDOUS WASTE AND TOXIC SUBSTANCES

PREPARED TESTIMONY ON BEHALF OF SAVE OUR SHORES CONCERNING SENATE BILL NO. 1751 TO CREATE A SHORE PROTECTION ACT OF 1987

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Wednesday, November 4, 1937, 2:00 p.m.
Dirksen Senate Office Building,
Room 406
Washington, D.C.

On behalf of Save Our Shores ("SOS"), we would like to thank the Subcommittees for inviting SOS to present comments on Senate Bill No. 1751 to create a Shore Protection Act of 1987. SOS is a New Jersey nonprofit corporation organized to combat pollution of the ocean and the recreational beaches along the New Jersey shore. The founding members of SOS are Robert Dennis, M.D., Roy Mittman, M.D., Dennis Sternberg, D.D.S., Steven Berkowitz, M.D., and Barry Slott, Esquire.

The Subcommittees, and specifically Senator Lautenberg, requested SOS's comments on Senate Bill No. 1751. SOS has retained Ballard, Spahr, Andrews & Ingersoll to act as its environmental legal counsel on certain matters, and has authorized us to present these comments on SOS's behalf to the Subcommittees for their consideration.

I. INTRODUCTION.

SOS strongly supports Senate Bill No. 1751. The transportation of nonhazardous solid waste in the ocean or in the waters tributary to the ocean poses a special environmental concern and, indeed, a serious human health concern. If one hauls waste in a truck, spills during loading, unloading, and transportation are litter; they become immediately apparent. On land, one cannot illegally dispose large quantities of refuse other than at a solid waste facility without a good bit of stealth. Therefore, most waste improperly dumped or released on land will be cleaned up promptly, and will consequently not ordinarily pose a serious health or environmental threat.

By contrast, the discharge of waste at sea often will not be detected until the waste washes up on a beach used by people. The consequent fouling of a recreational area will cause substantial aesthetic insult to the beach users, economic loss to them and to the businesses who depend upon recreational use of the nearshore, potential adverse health effects to the ocean users, and potential detriment to the environment. Further, some wastes will disintegrate or dissolve in the ocean to such an extent that beach users may not immediately notice that their water has become contaminated. They may continue to use the water, creating an especial health risk.

The difficulty of observing waste disposal or spills at sea exacerbates the health and environmental risks those releases pose. A sea hauler can with much more impunity allow "minor" releases of waste into the water than can a trucker on land. Moreover, once waste reaches the water, it may prove more difficult to clean up for the hauler than litter from a truck, particularly in the open sea.

The events of August 1987 illustrate these points. On August 13 and 14, 1987, solid waste washed up on a number of beaches in New Jersey at the height of the summer season. Beaches in several municipalities were closed. SOS believes that this waste originated in the City of New York, and consequently on October 2, 1987, SOS served upon the City of New York a notice of SOS's intention to file a citizen suit pursuant to a number of federal and state environmental statutes. For the Subcommittees' convenience, we have appended that notice letter to these comments as Exhibit A.

Proper enforcement of a program such as that envisioned by Senate Bill No. 1751 very well might have prevented the August 1987 incident. The waste involved might have been handled properly, and might never have reached the ocean.

Notwithstanding SOS's strong support for Senate Bill No. 1751, we recommend that the Subcommittees substantially modify the bill to strengthen it. The following comments discuss the principal areas in which we believe the bill would benefit from modification. In order to assist the Subcommittees, we have prepared alternative language, which we have appended to these comments as Exhibit B.

II. THE BILL SHOULD INCLUDE AN IMPROVED MECHANISM FOR TRACKING POSSIBLE SPILLS OR OTHER ILLEGAL DISPOSAL AT SEA.

The heart of Senate Bill No. 1751 consists of its system for tracking waste.[1] Title II would require the use of manifests for waste shipped over water. Section 102 would

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[1] The definition of "municipal or commercial wastes" in section 101(3) of Senate Bill No. 1751 requires revision. It purports to include all wastes "covered by Subtitle D of the Solid Waste Disposal Act." Subtitle D of the Solid Waste Disposal Act, 42 U.S.C. §§ 6941-6949a, "covers" all

(Footnote Continued)

require vessels to obtain identification numbers, which in the present draft also serve as permits. The identification numbers will allow the United States Environmental Protection Agency ("EPA") to track waste on those vessels.

Senate Bill No. 1751 would work a substantial improvement over the present system. Under the proposed Shore Protection Act some record would exist of waste shipment over water. In the event waste fouled the ocean, one could, through some careful work, develop likely vessels which might have been the source of the discharge. To be sure, Senate Bill No. 1751 would prohibit waste handling practices which result in discharges into the ocean. However, as laid out more fully in SOS's notice letter to the City of New York, dumping solid waste in the ocean without a permit under the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. §§ 1401-1445, is already

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(Footnote Continued)
"solid waste" as defined under that statute. See 42 U.S.C. § 6903(27). Treatment, storage, and disposal facilities not subject to the more stringent hazardous waste management requirements of subtitle C are sometimes referred to as "subtitle D facilities" as distinguished from "subtitle C facilities," but even "subtitle C facilities" must comply with the general requirements of subtitle D. See, e.g., 42 U.S.C. § 6945. Moreover, "subtitle D facilities" accept waste which meets the criteria for treatment as "hazardous waste" but falls within an exclusion from that definition--such as hazardous waste generated by "households"--as well as hazardous waste generated by small quantity generators and therefore subject to reduced regulation. For these reasons, subtitle D "covers" all "solid waste," and section 101(3) of the bill should be revised to subject all transporters of "solid waste" over water to the Shore Protection Act's regulation.

prohibited. Senate Bill No. 1751 would enhance EPA's ability to discover ocean dumping or spilling through the tracking system. An improved detection system should improve compliance.

Unfortunately, close monitoring of ocean shipment of waste under the scheme proposed by Senate Bill No. 1751 would require substantial effort on the part of EPA. Minor modifications to that system would make waste tracking considerably easier and enforcement consequently more efficient.

A. Waste Source Facilities and Disposal Facilities Should Obtain Identification Numbers.

In order properly to track solid waste, EPA should have a convenient method to identify the sources of solid waste shipped over water, the haulers of that waste, and the waste's destinations. The scheme proposed by Senate Bill No. 1751 only requires vessels to obtain identification numbers. Therefore, unless EPA sought to develop its own index of waste source and disposal facilities,[2] EPA could not easily determine whether any waste source or waste recipient was in compliance with the tracking system. Identification numbers would allow each of the three links in the transportation of waste over water to be entered easily into a computer database and to be sorted either by source, vessel, or disposal facility.

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[2] Senate Bill No. 1751 fails to define "disposal facility." Despite the inadvertent reference to "the landfill" in section 301(b) (which should be revised), "disposal facility" should be defined to include any land destination of a "vessel" at which the "vessel" unloads waste.

Moreover, SOS is not yet certain whether the principal discharges of solid waste into waters under the jurisdiction of the United States occur during loading and unloading or during transportation of waste. We have a strong suspicion that loading and unloading cause routine discharges of waste into water, and therefore that the loading and unloading points should be principal points of regulation. The beginning of this regulation would be inclusion of these facilities separately in the waste tracking system.

A useful analogy for the program which we propose may be taken from the hazardous waste management regulations promulgated by EPA pursuant to Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991i. See 40 C.F.R. pts. 260-271 (1986). Under the RCRA shceme, hazardous waste generators, transporters, and treatment, storage, or disposal facilities must each obtain an identification number, allowing EPA, states, and other parties more easily to track the generation, shipment, and treatment or disposal of hazardous waste throughout the country. See 40 C.F.R. §§ 262.12 (generators), 263.11 (transporters), 264.11 (TSD facilities not under "interim status"), 265.11 (interim status facilities) (1986).

B. The Identification Number Should Not Act As a Permit.

As presently drafted, Senate Bill No. 1751 would treat the identification number obtained by a vessel pursuant to sections 102 and 103 as a "permit." In our view, the permit and the identification number serve different purposes. Identification numbers allow EPA easily to track solid waste and to identify circumstances in which solid waste shipped over water may have been released into the water. By contrast, a permit application allows EPA to assess each solid waste transportation operation to determine its compliance with the applicable standards.

Permits serve extremely useful functions. As discussed below, we recommend that the standards for the issuance of a permit under the proposed Shore Protection Act be substantially strengthened. However, as a practical matter, EPA cannot issue permits of any sort to an entire industry in a short time if EPA is to make any sort of serious evaluation of the merits of the permit applications. Therefore, in order rapidly to implement the waste tracking system called for by Senate Bill No. 1751, the bill should separate the requirement for an identification number from the requirement for a permit.

Waste source facility owners or operators, vessel owners or operators, and disposal facility owners and operators should be required to obtain identification numbers as soon as practicable. Section 102(e) requires vessel operators to obtain identification numbers within 180 days of enactment of the Shore Protection Act. SOS would prefer to have the identification number system in place in a shorter period, such as 90 days. In particular, people use the ocean more during the summer than during the winter in the United States. Therefore, we recommend that the Shore Protection Act take effect as early as possible. Assuming the Shore Protection Act passes this winter, a shorter implementation period will tend to protect the beaches for the largest portion possible of the 1988 summer season.

C. The Waste Manifest System Should Be Strengthened.

Section 201 of Senate Bill No. 1751 would establish a manifest system for all shipments of solid waste over water. We strongly recommend that the Subcommittees modify the bill to strengthen that system. The system must allow early and convenient identification of missing shipments of waste, while reducing, to the greatest extent possible, duplicative records sent to EPA. Duplicative records can only serve to mask those submissions which reflect substantial problems.

1. The Manifest Should Indicate the Expected Course and the Expected Delivery Date.

The manifest system proposed by Senate Bill No. 1751, like the manifest system used under subtitle C of RCRA, relies upon the matching of a record of shipment to a record of receipt in order to assure that all waste shipped reaches an appropriate destination. In order to serve that function, the manifest must provide some outside date after which EPA, and others, may suspect a potential problem. Unlike waste shipped over the road, ocean shipment may take widely varying lengths of time for delivery. Accordingly, the manifest should state a date of expected delivery. If the completed manifest from the disposal facility is not received within an appropriate waiting period following the delivery date, one should be able to infer that either the waste was not delivered or that the manifest requirements have not been followed.

Similarly, if EPA discovers a missing volume of waste, EPA should have sufficient information to identify likely locations at sea for that waste. A manifest which includes some general specification of the course which the vessel intends to take will serve this purpose. Waste which does not reach a disposal facility can be inferred to have been discharged into the water at some point along the expected course, or otherwise diverted.

2. Manifests Should Be Returned to Waste Source Facilities and Source Facilities Should be Required to File Exception Reports.

The Shore Protection Act should not rely exclusively upon EPA's close scrutiny of manifests to identify potential problem shipments. Some mechanism should exist for identification by the regulated community of missing shipments. Waste source facility operators provide an obvious source of this information, much as generators do under the RCRA subtitle C regulations.

Section 201 should require a copy of a completed manifest to be returned from the waste disposal facility operator to the waste source facility operator. This serves two functions. First, the Shore Protection Act can then require a waste source facility operator to report the failure of a completed manifest to be returned within an appropriate period following the expected delivery date. The "exception report" would be similar to that required under subtitle C of RCRA. See 40 C.F.R. § 262.42 (1986). The report would flag for the EPA regional office a potential problem shipment without exhaustive monitoring by EPA.

Second, returning the manifest to the waste source facility operator would allow waste source facility operators to evaluate vessel operators' reliability. A waste source facility operator, in general, will not wish to use a vessel operator who cannot reliably deliver waste on time and without loss of volume. Accordingly, requiring return of manifests to the waste source facility operator, together with an exception reporting requirement, will tend to divert business from unreliable vessel operators to reliable vessel operators, furthering the objectives of Senate Bill No. 1751.

3. The "Regional Office" Should Be Specified as the One for the Region of the Waste Source Facility.

EPA has many regional offices. By hypothesis, the Shore Protection Act would cover shipment of waste over extended distances. Waste may travel from one EPA region to another.

Nevertheless, all of the materials pertaining to one shipment of waste should be available to a single EPA regional office. This will enable EPA more easily to match manifests at the time of shipment with manifests completed after delivery to the waste disposal facility. We recommend that the copies of manifests be required to be sent to the regional office of EPA for the region of the waste source facility, the point of origin. Of course, EPA is most concerned with manifests which are not matched with a completed version from the waste disposal facility. Therefore the region of the waste source facility provides the natural tracking point for this system.

4. All Actors Should be Required to Retain Copies of Manifests.

In order to assess compliance of waste source facilities, vessels, and waste disposal facilities with the requirements of the Shore Protection Act, the act should require each of these actors to retain copies of manifests for a specified period. This will enable an investigator to see in one place complete documentation for all solid waste handled by that person which waste was shipped by water. This system will provide particular benefit to investigators inquiring into the compliance of vessels or waste disposal facilities. Vessels and waste disposal facilities may handle waste from a number of waste source facilities in different regions. Should the Subcommittees accept our recommendation that the regional office for the region of the waste source facility receive copies of manifests, the regional office for each vessel or waste disposal facility may not have a complete set of manifests for waste handled by any vessel or waste disposal facility.[3]

5. EPA Need Only Receive One Copy of the Completed Manifest.

As presently drafted, section 201 would require both the vessel operator and the waste disposal operator to return a completed manifest to a regional office of EPA. (EPA would also receive an incomplete manifest from the waste source facility). Of course, this requires EPA to receive half again as much paper as it would if only one completed manifest were returned to the EPA regional office. In our view, the multiplication of paper to be handled by EPA will impede, rather than enhance, enforcement of the Shore Protection Act.

We recommend that the vessel operator complete the pertinent portions of the copies of the manifest which accompany the waste. We then recommend that the vessel operator obtain the execution of the waste disposal facility operator, leaving the waste disposal facility operator with a copy of the manifest. We then recommend that the vessel operator return one copy to the waste source facility operator, retain one copy, and send one copy to the regional office of EPA for the region of the waste source facility.

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[3] This system requires six copies of a manifest for (1) the source at the time of shipment, (2) EPA at the time of shipment, (3) the disposal facility at the time of delivery, (4) the vessel after delivery, (5) the source after delivery, and (6) EPA after delivery.

III. THE BILL'S ENFORCEMENT PROVISIONS SHOULD BE STRENGTHENED.

While the requirements of the proposed Shore Protection Act would prove enormously helpful to the protection of the ocean and its beaches, those requirements must have enforcement teeth. Senate Bill No. 1751 must include adequate provisions to assure a high level of compliance with the proposed statute's requirements.

A. EPA Should Have Authority to Issue Administrative Compliance Orders.

Senate Bill No. 1751 includes no provision under which EPA may order the owner or operator of a waste source facility, a vessel, or a waste disposal facility to comply in the future with violations of the act or to abate a past violation of the act. EPA only has authority to seek civil or criminal penalties. EPA should have the authority on an administrative level to order compliance and to order abatement. Failure to comply with an order issued pursuant to this authority should itself constitute a violation of the statute. Orders should be enforceable by a civil action in an appropriate district court.

B. The Shore Protection Act Should Include a Citizen Suit Provision.

Unlike most federal environmental statutes,[4] the proposed Shore Protection Act would not include a citizen suit provision. Citizen suit provisions allow parties other than the federal enforcing agency to bring suit to require compliance with a federal regulatory statute. These provisions allow parties with resources independent of EPA's limited enforcement budget to assist the enforcement effort. Quite often, citizen suit plaintiffs are among the most directly affected persons, and therefore the persons must likely promptly to enforce the statute. For example, the state of New Jersey, which incurred substantial cost as the result of the August 1987 waste incidents, and SOS, whose members were directly affected by the beach pollution in August 1987, have sought to use federal citizen suit provisions against the City of New York to force a change in the way the City of New York handles its solid waste shipped by water. Moreover, as the foregoing example suggests, the "citizen suit" label often proves a misnomer. States, municipalities, and even businesses can and do fruitfully avail themselves of "citizen suit" provisions.

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[4] See, e.g., Section 505 of the Clean Water Act, 33 U.S.C. § 1365, as amended by Section 504 of the Water Quality Act of 1987, Pub. L. No. 100-4, § 504, 101 Stat. 7, 75 (Feb. 4, 1987); Section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972; Section 105(g) of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1415(g); Section 304 of the Clean Air Act, 42 U.S.C. § 7604; Section 20 of the Toxic Substances Control Act, 15 U.S.C. § 2619; and Section 1449 of the Safe Drinking Water Act, 42 U.S.C. § 300j-8.

C. Permit Review Should Include a Compliance History Review.

As discussed above, we recommend that the permits issued to vessel operators should be separate from their identification numbers. EPA should only issue permits based upon a substantive review of appropriate factors concerning the vessel, its proposed mode of operation, and its operator.

In particular, the history of the vessel operator's compliance with all environmental statutes and other requirements should form a portion of the permit review under the Shore Protection Act. EPA should have authority to determine that an operator which has outstanding violations of the Shore Protection Act, or any other environmental statute, is not an appropriate permittee under the Shore Protection Act. Moreover, even if the operator has addressed prior violations, an operator with a sufficiently poor compliance history should not qualify for a permit because the operator then would display a lack of ability or intention to comply with the environmental laws.

We have borrowed these notions from the highly successful provisions of the Pennsylvania Solid Waste Management Act, Pa. Stat. Ann. tit. 35, §§ 6018.101 to .1003 (Purdon Supp. 1987), and the Pennsylvania Clean Streams Law, Pa. Stat. Ann. tit. 35, §§ 691.1 to .1001 (Purdon 1977 and Supp. 1987), which impose those requirements upon applicants for permits under these two principal Pennsylvania environmental statutes. See Pa. Stat. Ann. tit. 35, § 6018.504(c), (d) (West Supp. 1987) (Solid Waste Management Act); Pa. Stat. Ann. tit. 35, § 691.609(a), (b) (West Supp. 1987) (Clean Streams Law). These statutory sections have proved an enormously effective enforcement tool to the Pennsylvania Department of Environmental Resources. No applicant for a Solid Waste Management Act or Clean Streams Law permit with a poor compliance history may obtain such a permit. Therefore, businesses which require issuance, modification, or renewal of those permits must maintain environmental compliance throughout Pennsylvania, and indeed throughout the United States.

By making issuance of a permit under the Shore Protection Act contingent on a good environmental compliance record, and specifically upon a good compliance record under the Shore Protection Act, the statute would make no vessel operable for more than five years with a poor compliance record and would make vessels difficult to transfer with poor compliance records.

In order to preclude avoidance of this provision by creation of separate, but related, business entities with separate compliance histories, the statute must authorize EPA to consider the compliance history of all related persons as one compliance history for this purpose. Thus, the compliance history inquiry must address the corporate entity which operates a vessel, its related corporations, its parents, and its subsidiaries.

D. The Civil Penalty Maximums Should Be Increased.

Senate Bill No. 1751 establishes the basic civil penalty amount for violations of the proposed Shore Protection Act at $5,000. That amount is remarkably small. In fact, $5,000 fines may not deter violations.

Many federal environmental programs impose substantially higher penalty amounts. Earlier this year the Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat. 7 (Feb. 4, 1987), increased the civil penalty amount for violations of the federal Clean Water Act, 33 U.S.C. § 1251-1376, to $25,000 from $10,000. Pub. L. No. 100-4, § 313(b)(1), amending 33 U.S.C. § 1319(d). Moreover, continuing violations, particularly continuing violations of Title III of the Shore Protection Act, should be considered separate violations on each day of the violation; that is the rule under most federal environmental statutes. See, e.g., 33 U.S.C. § 1319(d). These much higher penalty amounts will substantially increase the probability of compliance.

E. Criminal Liabilities Should Be Imposed On Corporate Officers for Knowing False Statements.

Senate Bill No. 1751 requires vessel owners and operators to certify that all of the information they supply in connection with their identification number and permit applications and on their manifests is correct. Similar obligations should be imposed on operators of waste source facilities and waste disposal facilities if the bill requires them to obtain identification numbers. In addition, the Shore Protection Act should subject all persons required to certify the accuracy of the information they provide to criminal liability for knowingly making false statements or material misrepresentations. Corporate officers responsible for making false statements should bear personal liability.

A truth telling requirement with criminal penalties and a provision putting the burden on individual officers should improve compliance. It will make individuals think twice before assuming the risks involved with supplying false information. The Water Quality Act of 1987 recently imposed similar penalties to encourage compliance with the Clean Water Act's reporting requirements. Pub. L. No. 100-4, § 312, 100 Stat. 7, 44 (Feb. 4, 1987), to be codified at 33 U.S.C. § 1319(c)(4).

F. Liability and "Superlien" Provisions Would Assist Enforcement.

As discussed below, we strongly recommend that the Shore Protection Act not only establish civil and criminal liability for violations, but that it also explicitly make operators of source facilities, vessels, and disposal facilities (in some circumstances) liable in a cost recovery action for the cleanup of releases of solid waste into the ocean. In addition, we recommend that a successful governmental plaintiff obtain a lien upon all of the assets of the vessel owner and operator with a priority higher than all other liens, including prior perfected security interests. This sort of lien has become known as a "superlien."

These liability provisions will have substantial enforcement benefits. Waste source facility operators faced with liability for cleanup of their waste released by a vessel will attend closely to a vessel operator's responsibility and reliability before using that vessel operator. Further, the lenders to vessel operators will investigate the compliance of their borrowers closely if they face loss of their collateral to a "superpriority" lien.

A number of federal and state environmental programs, in particular those addressing site contamination, have yielded similar satisfactory results from liability provisions. By imposing liability on contracting parties, these statutes have successfully in altered the rules governing private arrangements. These alterations have induced private parties to investigate compliance with environmental statutes and the existence of contaminated sites. In turn, these incentives for private enforcement have increased the frequency of compliance.

The federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1617 (Oct. 17, 1986), provides the most familiar example of this result. By imposing liability upon a new owner or operator of real estate, CERCLA has induced buyers of real estate and businesses to investigate target facilities for contamination problems. These private investigations have resulted in the identification of many contaminated sites previously unknown. Further, they have focused more careful attention on the handling of hazardous substances, because a record of good "housekeeping" can increase the salability of a property. Indeed, CERCLA may indirectly have increase the rate of compliance with RCRA and other programs governing the handling of hazardous substances.

An even more dramatic impact has been attained in those states with statutes affecting title to businesses and property. Most notably, the New Jersey Environmental Cleanup Responsibility Act ("ECRA"), N.J. Stat. Ann. 13:1K-6 to -13 (West Supp. 1987), authorizes New Jersey or a buyer to void a transaction if the seller does not (a) investigate a property to be transferred for contamination and (b) otherwise comply with the requirements of the statute. By including this voiding sanction, New Jersey has achieved a remarkably high compliance rate with ECRA. By contrast, the parallel Connecticut program has had a relatively low compliance rate due to the failure of the Connecticut Negative Declaration Statute, Conn. Pub. Act No. 85-568, to include a voiding sanction.

Further, six states have enacted "superlien" statutes under which the state obtains a "superpriority" lien on sites which it cleans up.[5] These liens have priority superior to that of other prior perfected security interest. In these states, lenders have evolved fairly elaborate procedures to police the hazardous substance "housekeeping" of their borrowers, and lenders have forced site investigations prior to the issuance of loans.

Along these lines, we believe that the imposition of liability will increase compliance with the Shore Protection Act. In addition, imposition of a superpriority lien on assets of vessel operators responsible for releases requiring cleanup will induce lenders in particular to police compliance with this statute.

IV. THE BILL SHOULD ESTABLISH LIABILITY FOR CLEANUP COSTS.

A. Liability Provision Would Equitably and Prudently Allocate the Costs of Cleanup.

The principal portion of the Shore Protection Act seeks to prevent trash dumping in the ocean. However, should a disaster occur, many persons, and in particular many municipalities and counties, will incur substantial costs. Fouled beaches must be cleaned up. Beaches unsafe for swimming must be tested and posted. Cleaned up waste must be disposed of.

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[5] Ark. Stat. Ann. §§ 82-4708, 82-4720; Conn. Gen. Stat. Ann. § 22a-452a; Mass. Gen. Laws Ann. ch. 21E, § 13; N.H. Rev. Stat. Ann. § 147-B:10-b; N.J. Stat. Ann. 58:10-23.11f(f); Tenn. Code Ann. § 68-46-209.

The Shore Protection Act should authorize the placement of the burden for these costs on those responsible, and not on local governments or private property owners along the beach.

For these reasons, we recommend that the Shore Protection Act include a provision for liability similar to that of section 107 of CERCLA, 42 U.S.C. § 9607. The accompanying draft language adapts the CERCLA provision to the circumstances of the Shore Protection Act. It would establish liability only for remediation of releases. It would leave to existing law remedies for other injury to persons or property.

B. The Source Facility, Vessel, and Disposal Facility Should Be Liable.

The persons liable for cleanup should include the waste source facility owner and operator and the vessel owner and operator. This liability should be strict, joint, and several; proof of fault or allocation of responsibility would require plaintiffs to uncover facts to show intent or negligence, proof typically unavailable even in principle in this sort of case. Further, in circumstances where the release occurs during unloading at a disposal facility, the disposal facility owner or operator should also be liable; in those circumstances, the disposal facility operator is equally responsible for proper waste handling practices.

Some may argue that the waste source facility owner or operator should not be responsible for discharges which do not occur during loading of the vessel. However, the waste source facility owner or operator bears ultimate responsibility for the choice of ocean transportation rather than any other mode of transportation, and also for the choice of the particular vessel operator. By imposing strict, joint, and several liability upon the waste source facility owner and operator, the Shore Protection Act would induce waste source facilities (and their customers) more often to use less risky forms of transportation and more often to contract with reliable vessel operators.

C. The Shore Protection Act Should Include a "Superlien" in Favor of Governmental Entities.

A large portion of the cost of cleaning up a release of solid waste into water will fall upon governmental entities, and especially local governments. Townships and counties clean beaches, not the federal government.

Additional costs incurred by governments are spread to all taxpayers. The public at large should not be forced to pay for gross failures of waste handling leading to fouled beaches. Governmental entities should be assured that they may recover their cleanup cost. To this end, we recommend that response costs incurred by governmental entities should become liens with a priority higher than all other liens on all of the assets of a vessel owner or operator. In this way, governmental entities will "stand first in line" should vessel owners and operators prove not to be solvent.[6] Moreover, this "superlien" will induce lenders to vessels privately to police compliance with the statute.

D. The Statute Should Establish a Standard of Proof in Cost Recovery Actions.

The proposed Shore Protection Act would provide substantially greater information on shipments of solid waste over water than presently exists. A manifest will document the embarkation of any shipment. Failure of a completed manifest to return would provide some evidence that the shipment did not properly reached its destination. Moreover, if the manifest sets out the general course to be taken by the vessel, the manifest would provide some evidence of the range of potential locations for any release of solid waste into the water; the release would probably occur along the set out course. In combination with (1) evidence that solid waste of the appropriate sort fouled a beach or a nearshore area and (2) evidence that the winds or currents at the particular time would transport waste from a reasonably likely location of the vessel to the point where the waste washed up, an unreturned manifest should provide some substantial evidence that the particular vessel in question discharged waste which washed up on a beach.

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[6] We have limited the scope of the proposed "superlien" advertently. Many have argued that "superliens" wreak havoc with ordinary systems of assuring title to real or personal property. See, e.g., Simon v. Oldman's Township, 203 N.J. Super. 365, 497 A.2d 204, 209 (Chanc. Div. 1985). By restricting potential plaintiffs able to execute upon a first priority liens to governments, we hope to reduce the possibility of frivolously asserted liens. Moreover, we have only recommended placing the risk of these liens upon the parties responsible for a release of waste who are involved on a regular basis in the business of ocean waste transportation--vessel owners and operators.

Nevertheless, as this discussion may itself illustrate, proof of a connection between particular waste on a beach and improper releases of solid waste at sea will always remain attenuated. In order for the Shore Protection Act to have liability provisions with teeth, the act should provide that the sort of evidence which we discuss here should suffice to make out a prima facie case that a vessel released waste later found in the water or on a beach.

To be sure, a defendant should be entitled to present evidence rebutting that case. However, the mere lack of additional evidence should not cause a plaintiff's case to fail. In most circumstances, no additional evidence will exist. Therefore, the liability provision will have no effect unless the statute establishes a rebuttable presumption such as we propose here. For these reasons, we strong recommend that the statute include a provision explicitly establishing such a rebuttable presumption in the liability section.

V. THE BILL'S PERMITTING CRITERIA SHOULD BE STRENGTHENED.

A. The Statute Should Require Substantive Review.

Section 102 of Senate Bill No. 1751 does not impose any substantive requirements upon the issuance of a permit to a vessel. Indeed, the "permit" really amounts to no more than an identification number under the scheme as presently drafted.

Section 102 should require a substantive review of the suitability of the vessel for its intended uses by EPA. EPA should review the compatibility of the vessel with the waste intended to be hauled. EPA should also consider the propriety of the vessel operator's procedures. EPA should be authorized to promulgate regulations specifying the contents of a permit application and the substantive standards for issuance of a permit.

B. The Statute Should Require Compliance History Review.

A permit application should also include an enumeration of a vessel owner's and its operator's compliance history, together with a compliance history of the owner's and the operator's corporate parents, subsidiaries, and other related corporations and persons. By reviewing this compliance history, EPA can determined whether the persons seeking to handle solid waste in this particularly sensitive manner have displayed the proper approach towards compliance and environmental protection. In addition, inclusion of a compliance history requirement in permit reviews will assist enforcement efforts, as described above.

VI. THE BILL'S WASTE HANDLING REQUIREMENTS SHOULD BE STRENGTHENED.

Section 301 of Senate Bill No. 1751 enumerates, in broad terms, standards for the handling of waste applicable to waste source facilities, vessels, and waste disposal facilities. These statutory provisions are appropriately broad, and necessarily vague. This bill is not the appropriate place to specify the procedures acceptable in each instance. However, the bill does not include a provision allowing EPA to promulgate regulations implementing Title III. The bill should do so.

A provision authorizing implementing regulations may be read to preclude enforcement of the statutory language pending promulgation of those regulations. For this reason, we recommend that the statute explicitly state that Title III would be enforceable independent of EPA's regulations, but that EPA may promulgate regulations more specify enumerating acceptable and unacceptable waste handling practices.

VII. CONCLUSION.

For the reasons discussed above, on behalf of Save Our Shores, we strongly urge the Subcommittees to act favorably on Senate Bill No. 1751. However, we also strongly recommend that the Subcommittees strengthen the bill so that the proposed Shore Protection Act will yield the desired results with the minimum investment of enforcement resources by EPA. We respectfully recommend that the Subcommittees amend Senate Bill No. 1751 as set out in the accompanying Exhibit B, but in any event to approve the bill.

Respectfully submitted,

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Exhibit A:	Letter from David G. Mandelbaum to Edward I. Koch (October 2, 1987) giving notice of Save Our Shores' intention to file suit against the City of New York.

L48356

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DAVID G. MANDELBAUM
DIRECT DIAL 215 636-4675

October 2, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Edward I. Koch
Mayor of the City of New York
City Hall
New York, New York 10007

The Honorable Brendan Sexton
Commissioner of the New York
City Department of Sanitation
125 Worth Street
New York, New York 10013

The Honorable Joe Ivey Boufford, M.D.
President
New York Health and Hospitals Corp.
125 Worth Street
New York, New York 10013

Re: Notice of Intent to Sue

Dear Mayor Koch, Commissioner Sexton, and President Boufford:

This firm represents Save Our Shores ("SOS"), an unincorporated association of New Jersey residents concerned with pollution of the Atlantic Ocean at or near New Jersey's recreational beaches. By this letter, SOS gives you notice of its intention to file an action asserting claims under: (1) the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991i; (2) the federal Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1376, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat. 7 (Feb. 4, 1987); (3) the federal Marine Protection, Research and Sanctuaries Act ("MPRSA"), 33 U.S.C. §§ 1401-1445; and (4) the New Jersey Environmental Rights Act ("ERA"), N.J. Stat. Ann. 2A:35A-1 to -14 (West Supp. 1987). In particular, SOS will seek injunctive relief precluding the City of New York from discharging municipal solid waste into the Atlantic Ocean, its tributary rivers or bays, or their estuaries. SOS will also seek an injunction against the handling and transportation of municipal solid waste by the City in barges under circumstances which make discharges of solid waste into water likely.

In addition, on or about August 13 and 14, 1987, municipal solid waste dumped by the City of New York into the Atlantic Ocean or its tributaries made its way onto a number of beaches in New Jersey. This solid waste contained hazardous substances as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1617 (Oct. 17, 1986). SOS and its members incurred response costs in cleaning up these hazardous substances. While CERCLA does not require prior notice of an intention to bring a cost recovery action, out of an abundance of caution, SOS provides you with this notice of its intention to seek a declaration that any response costs incurred by SOS or its members are recoverable from the City of New York pursuant to CERCLA.

SOS is aware that by letter dated September 15, 1987, the State of New Jersey provided notice to you of its intent to sue pursuant to CWA and RCRA, along with its intention to assert certain other claims. SOS adopts the State of New Jersey's September 15 notice of intent to sue. SOS intends all of its actions to supplement and to assist the State of New Jersey's efforts to abate practices which have or may foul New Jersey's beaches.

1. Factual Background.

SOS believes, and therefore asserts, that the City of New York, through its Department of Sanitation, collects large volumes of municipal solid waste from individuals and businesses during regularly scheduled refuse collections and from City agencies, such as the New York Health and Hospitals Corporation. The City of New York incinerates much of the solid waste. The City disposes of incinerator ash and unincinerated solid waste in landfills. The principal landfill used by the City of New York is an unpermitted facility operating under a consent order with the New York Department of Environmental Conservation known as the Fresh Kills Landfill located on Staten Island.

The City transports, or causes to be transported, a substantial portion of the waste sent to the Fresh Kills Landfill and other facilities by barge. The City trucks its solid waste, or causes its solid waste to be trucked, to one of several marine transfer stations or incinerators. In particular, the City utilizes at least one marine transfer station and incinerator in Southwest Brooklyn. At these marine transfer stations, solid waste or incinerator ash is loaded on barges for transportation to the Fresh Kills Landfill or elsewhere.

In the process of loading and unloading barges, the City intentionally or unintentionally spills or otherwise discharges solid waste into various waters tributary to the Atlantic Ocean. In addition, some or all of the barges used by the City of New York to transport its solid waste are so designed as to allow the solid waste to escape from the barge during transportation; the barges do not contain completely closed holds or compartments for the solid waste. In order to reduce the costs of its barging operations, the City loads its barges quite full, a process which facilitates spills or discharges of solid waste into the water. Moreover, the City maintains no accurate inventory of the quantity of waste loaded onto barges or received at landfills, so that supervisory personnel who do not directly observe a discharge or a spill cannot easily learn of any such discharge or spill; because the City cannot easily learn of a pervasive problem in its solid waste management system, the City cannot implement corrective measures.

On or about August 13 and 14, 1987, solid waste from the City of New York and discharged from a marine transfer facility, a barge, or the Fresh Kills Landfill, washed up on recreational beaches in the State of New Jersey. This solid waste contained, among other things, syringes and other hospital waste generated by the New York Health and Hospitals Corporation. While not presently believed to have constituted "hazardous waste" as defined pursuant to RCRA, this solid waste--like most solid waste--contained "hazardous substances" as defined pursuant to CERCLA. The August incident presents merely one egregious example of an ongoing and pervasive problem incident to marine transportation of solid waste by the City of New York.

2. Resource Conservation and Recovery Act.

SOS gives notice of its intent to file claims under two distinct provisions of RCRA. First, pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), SOS seeks to enjoin the City of New York's practices which constitute an imminent and substantial threat to health or to the environment. Second, pursuant to section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), SOS seeks to enjoin the City of New York's practices which constitute "open dumping," practices prohibited by section 4005 of RCRA, 42 U.S.C. § 6945(a).

a. Imminent and Substantial Endangerment.

Section 7002(a)(1)(B) allows:

> any person [to] commence a civil action on his own behalf . . . against any person, including . . . any other governmental instrumentality or agency . . . , and including any past or present generator, past

> or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid . . . waste which may present an imminent and substantial endangerment to health or the environment . . . .

42 U.S.C. § 6972(a)(1)(B).

The City of New York's solid waste management practices have led, and will continue to lead, to the discharge of solid waste into the Atlantic Ocean or its tributaries. This waste has affected, and will continue to affect, areas used recreationally by the public, posing a substantial risk to public health and safety. In addition, it will degrade the marine environment. Accordingly, the City of New York's practices for the handling, storage, treatment, transportation, and disposal of its municipal solid waste, including hospital waste from the Health and Hospitals Corporation, presents an imminent and substantial endangerment to health and the environment. This endangerment occurs in New Jersey, and elsewhere on the Atlantic coast.

b. Open Dumping.

Section 4005(a) of RCRA provides, in pertinent part:

> Upon promulgation of criteria under section [1008(a)(3) of RCRA], any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited . . . . The prohibition contained in the preceding sentence shall be enforceable under section [7002 of RCRA] against persons engaged in the act of open dumping.

42 U.S.C. § 6945(a). The United States Environmental Protection Agency ("EPA") has promulgated criteria for the classification of practices as "open dumping" pursuant to section 1008(a)(3) of RCRA, 42 U.S.C. § 6907(a)(3). See 40 C.F.R. pt. 257 (1986).

The City of New York's solid waste management practices constitute "open dumping" as defined by EPA's criteria.[1] First, the City of New York's practices may cause or contribute to the taking of endangered or threatened species of plants, fish, or wildlife, as prohibited by section 3-2 of EPA's section 1008(a)(3) criteria. 40 C.F.R. § 257.3-2 (1986). The City of New York spills municipal solid waste, including plastic wrappers, into the Atlantic Ocean or its tributaries. Endangered or threatened sea turtles are known to ingest solid waste, and especially plastic wrappers. The solid waste tends to obstruct the sea turtles' respiratory and digestive systems, causing them to asphyxiate or starve. In addition, the placement of solid waste into the ocean may adversely affect other threatened or endangered species.

Second, to the extent that the discharge of municipal or solid waste from a marine transfer facility, barge, or disposal facility does not constitute a discharge from a pollutant from a "point source" as defined under CWA (see below), the City of New York's practices "cause non-point source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator [of EPA] under section 208 of the Clean Water Act, as amended." 40 C.F.R. § 257.3-3(c) (1986). The discharge of solid waste into waters of the United States which enter New Jersey violates the New Jersey Statewide Water Quality Management Program Plan and each of the approved areawide water quality management plans in New Jersey.

Third, and more generally, the spilling of solid waste into rivers, bays, or the ocean must constitute the practice of "open dumping" as contemplated by RCRA. That practice clearly poses "a reasonable probability of adverse effects on health or the environment." 40 C.F.R. § 257.1(a) (1986). It therefore constitutes "open dumping" as defined pursuant to RCRA.

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[1] To be sure, EPA's criteria are somewhat outdated. Pursuant to section 302(a)(1) of the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, 98 Stat. 3224, 3267 (Nov. 8, 1984), EPA must promulgate revisions to its section 1008(a)(3) criteria by March 31, 1988. 42 U.S.C. § 6949a(c). In enacting the 1984 amendments, Congress required EPA to focus upon groundwater contamination from land disposal facilities. However, SOS expects EPA more globally to address solid waste management in its revised section 1008(a)(3) criteria, and SOS will request EPA to promulgate criteria specifically addressing marine transportation and disposal of solid waste.

Section 7002(a)(1)(A) of RCRA authorizes "any person" to enforce the open dumping prohibition of section 4005(a). 42 U.S.C. § 6972(a)(1)(A). The particular open dumping at issue here occurs in New York and, to the extent the City of New York's barges travel into its waters, New Jersey.

3. Clean Water Act.

SOS gives notice that it intends to seek injunctive and mandatory relief under CWA requiring abatement of the City of New York's solid waste management practices, which practices result in discharges of solid waste into navigable waters of the United States, the contiguous zone, or the territorial sea.

Section 301(a) of CWA provides that "except as in compliance with [the permitting requirements of CWA], the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a). The City of New York's spilling or discharging of solid waste from marine transfer stations, barges, or solid waste management facilities constitutes "the discharge of a pollutant." The solid waste constitutes a "pollutant." 33 U.S.C. § 1362(6). Its spilling constitutes a "discharge" because it involves the addition of a pollutant to "navigable waters," the "territorial sea," or "contiguous zone" from a "point source." 33 U.S.C. § 1362(12). The barges must constitute "point sources." 33 U.S.C. § 1362(14). The loading and unloading facilities also constitute "point sources." Id. Each of the principal surface waters surrounding the City of New York, as well as the Atlantic Ocean constitute either "navigable waters," 33 U.S.C. § 1362(7), or the "territorial sea" or "contiguous zone," 33 U.S.C. § 1362(9).

The City of New York has no permit pursuant to section 402 of CWA either from EPA, see 42 U.S.C. § 1342, or the New York Department of Environmental Conservation, see N.Y. Envtl. Conserv. Law art. 17 (McKinney 1984 and Supp. 1987). Accordingly, the City of New York has violated CWA.

Section 505 of CWA, 33 U.S.C. § 1365, authorizes:

> any citizen [to] commence a civil action on his own behalf . . . against any person (including . . . any . . . governmental instrumentality or agency . . .) who is alleged to be in violation of (A) an effluent

> standard or limitation under this chapter . . . .

33 U.S.C. § 1365(a)(1)(A). An unlawful act under section 301 constitutes an effluent limitation for purposes of section 505. 33 U.S.C. § 1365(f)(1).

SOS gives notice that it not only intends to seek injunctive and mandatory relief pursuant to section 505(a)(1) of CWA, but also to seek assessment of civil penalties in the amount of $25,000 per day for each day on which the City of New York discharged solid waste of any sort to a water of the United States. Section 505(a) authorizes a court to apply any appropriate civil penalties under section 309(d) of CWA. Section 309(d), as amended by section 313 of the 1987 amendments, authorizes imposition of penalties of up to $25,000 per day for each violation. Pub. L. 100-4, section 313(b)(1), 101 Stat. at 45, to be codified at 33 U.S.C. § 1319(d).

The sources of the discharges which SOS seeks to abate lie in New York and, to the extent the City of New York's barges travel in its waters, New Jersey.

4. Marine Protection, Research and Sanctuaries Act

SOS gives notice that it intends to seek abatement of solid waste dumping in the ocean pursuant to MPRSA.

Section 101 of MPRSA prohibits (a) the transportation for the purpose of dumping in the ocean and (b) the dumping in the ocean of, among other things, solid waste. 33 U.S.C. § 1411. The jurisdiction of the statute extends to the contiguous zone and the territorial sea as defined pursuant to CWA. 40 C.F.R. § 220.2(c) (1986). The City of New York's solid waste transportation practices regularly and necessarily result in the dumping of solid waste into the ocean. The City of New York has no permit pursuant to MPRSA for this purpose. Section 105(g) of MPRSA authorizes private persons to bring suit to enforce this prohibition. 33 U.S.C. § 1415(g). The violations of this prohibition take place in New York and New Jersey.

5. New Jersey Environmental Rights Act.

Section 4 of ERA authorizes either of two sorts of actions. First, "[a]ny person may maintain an action in a court of competent jurisdiction against any other person to enforce, or to restrain the violation of, any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment." N.J. Stat. Ann. 2A:35A-4(a) (West Supp. 1987). Second, in the absence of a specific statutory violation, such a suit may seek "declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction." N.J. Stat. Ann. 2A:35A-4(b) (West Supp. 1987). Section 3(b) further defines "pollution, impairment or destruction of the environment" to mean:

> any actual pollution, impairment or destruction to any of the natural resources of the State [of New Jersey] or parts thereof. It shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper disposal of refuse, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic areas.

N.J. Stat. Ann. 2A:35A-3(b) (West Supp. 1987).

The solid waste management practices of the City of New York constitute "pollution, impairment or destruction of the environment" of New Jersey within the meaning of ERA. The solid waste which the City of New York spills or discharges into the Atlantic Ocean and its tributaries has washed up and will wash up on New Jersey's beaches and will degrade the New Jersey environment. Moreover, as discussed above, that activity violates a number of federal statutes designed to protect the environment. Moreover, it violates a number of New York statutes designed to protect the environment. To the extent that New York City barges venture into the territorial waters of the State of New Jersey, the City of New York's practices violate the New Jersey environmental laws. Finally, even if the City of New York's practices violate no statutory standard, section 4(b) of ERA authorizes a court to restrain the City of New York's improper solid waste management practices which tend to cause pollution of the New Jersey environment.

a. Violations of Statutory Standards.

As discussed above, the activities of the City of New York create an imminent and substantial endangerment to health or to the environment in violation of RCRA, constitute the practice of open dumping in violation of RCRA, constitute an unpermitted discharge of pollutants to the navigable waters of the United States in violation of CWA, and constitute unpermitted ocean dumping in violation of MPRSA.

In addition to these federal violations, the City of New York's activities violate the general prohibitions on water pollution contained in title 17-05 of the New York Environmental Conservation Law and the prohibition on discharges of pollutants without a State Pollution Discharge Elimination System permit contained in title 17-08 of the Environmental Conservation Law. See N.Y. Envtl. Conserv. Law §§ 17-0501, -0505, -0701, -0807(4) (McKinney 1984 and Supp. 1987). Further, the discharge of solid waste from transfer stations, barges, or disposal facilities violates the requirements of article 27 of the Environmental Conservation Law, and in particular the requirements of titles 3 and 7 to that article. See N.Y. Envtl. Conserv. Law art. 27 (McKinney 1984 and Supp. 1987).[2]

To the extent that the City of New York's barges venture into waters of the State of New Jersey, they there discharge solid waste. That constitutes a violation not only of federal law, but also of New Jersey law. Specifically, it constitutes an unpermitted discharge prohibited by the New Jersey Water Pollution Control Act, N.J. Stat. Ann. 58:10A (West 1982 and Supp. 1987), and the New Jersey Spill Compensation and Control Act, N.J. Stat. Ann. 58:10-23.11 to -23.11z (West 1982 and Supp. 1987).

b. Pollution of the Environment.

As highlighted by the incidents of mid-August 1987, the City of New York's solid waste management practices cause substantial impairment to the environment of New Jersey, whether or not they are prohibited by any specific law. Accordingly, SOS will seek to restrain those solid waste management practices pursuant to section 4(b) of ERA.

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[2] ERA requires damage to the New Jersey environment to be applicable. However, ERA does not restrict the statutes, rules, regulations, or orders which an ERA plaintiff may seek to enforce. If out-of-state activity affects the New Jersey environment and that activity is prohibited by out-of-state or federal law, ERA authorizes citizens privately to enforce those out-of-state laws. Accordingly, ERA authorizes SOS to seek an order of a court which order will require compliance with federal or New York law.

6. Attorneys' and Expert Witnesses' Fees.

Each of the foregoing statutes authorizes the recovery by SOS of its attorneys' and expert witnesses' fees to the extent that SOS prevails. SOS will seek recovery of those fees.

7. Comprehensive Environmental Response, Compensation and Liability Act.

The solid waste which the City of New York discharged into the Atlantic Ocean or its tributaries in August 1987 and which washed up on the beaches of New Jersey contained "hazardous substances" within the meaning of CERCLA. SOS and its members incurred response costs as the result of the fouling of their beaches. These response costs were consistent with the National Contingency Plan, 40 C.F.R. pt. 300 (1986). Accordingly, SOS is entitled to a declaration that the City of New York is liable for those response costs.

8. Identification of Person Giving Notice and of Counsel.

SOS is a New Jersey nonprofit corporation with members who are residents and citizens of New Jersey concerned with the health, environmental, and aesthetic impacts of pollution of the Atlantic Ocean along the New Jersey shore. The founding members of SOS are Robert Dennis, M.D., Roy Wittman, M.D., Dennis Sternberg, D.D.S., Steven Berkowitz, M.D., and Barry Slott, Esquire. Each of these individuals is a regular recreational user of the beaches in New Jersey and of the nearshore waters. In addition, in their professional practices, each of these individuals encounters the effects of ocean contamination on their patients.

SOS maintains an office at:

Save Our Shores
Jersey Shore Plaza
2040 Sixth Avenue
Neptune City, New Jersey 07753
201-775-2090.

SOS has retained this law firm to act as counsel on this matter. Please address all inquires to me at the address and telephone given above. In my absence, inquiries may be directed to Robert B. McKinstry, Jr., Esquire, at this address. Mr. McKinstry's telephone number is 215-636-4669.

9. Notice.

As required by (a) section 7002(b)(1)(A) of RCRA, 42 U.S.C. § 6972(b)(1)(A); (b) its implementing regulations, 40 C.F.R. pt. 254 (1986); (c) section 7002(b)(2)(B) of RCRA, 42 U.S.C. § 6972(b)(2)(B); (d) section 505(b) of CWA, 33 U.S.C. § 1365(b)(1); (e) its implementing regulations, 40 C.F.R. pt. 135 (1986); (f) section 105(g)(2)(A) of MPRSA, 33 U.S.C. § 1415(g)(2)(A); and (g) section 11 of ERA, N.J. Stat. Ann. 2A:35A-11 (West Supp. 1987), SOS is serving a copy of this notice letter upon the following: (1) the Administrator of the United States Environmental Protection Agency, (2) the Regional Administrator of the United States Environmental Protection Agency for Region II, (3) the Commissioner of the New York Department of Environmental Conservation, (4) the Director of the Division of Water of the New York Department of Environmental Conservation, (5) the Director of the Division of Solid and Hazardous Waste of the New York Department of Environmental Conservation, (6) the Commissioner of Environmental Protection of the State of New Jersey, (7) the Director of the Division of Water Resources of the New Jersey Department of Environmental Protection, (8) the Director of the Division of Coastal Resources of the New Jersey Department of Environmental Protection, (9) the Director of the Division of Solid Waste Management of the New Jersey Department of Environmental Protection, (10) the Attorney General of the State of New Jersey, and (11) the Boards of Chosen Freeholders of the Counties of Monmouth, Ocean, Atlantic, and Cape May, New Jersey.

10. Conclusion.

SOS would be willing to discuss the contents of this notice letter with you so as to resolve this dispute without litigation. Should you wish to discuss this matter further, please contact me at this address and telephone number. For your convenience, please note that I will be out of my office during the weeks of October 5 and October 12.

Sincerely,

David G. Mandelbaum

DGM:ct

cc: Peter L. Zimroth, Esquire, Corporation Counsel of the City of New York
Administrator Lee M. Thomas, United States Environmental

Protection Agency
Regional Administrator Christopher Daggett, United States Environmental Protection Agency, Region II
Commissioner Henry G. Williams, New York Department of Environmental Conservation
Director Dan Barolo, New York Department of Environmental Conservation, Division of Water
Director Norman Nosenchuck, New York Department of Environmental Conservation, Division of Solid and Hazardous Waste
Commissioner Richard T. Dewling, New Jersey Department of Environmental Protection
Director George McCann, New Jersey Department of Environmental Protection, Division of Water Resources
Director John R. Weingart, New Jersey Department of Environmental Protection, Division of Coastal Resources
Director Michael DeBonis, New Jersey Department of Environmental Protection, Division of Solid Waste
W. Cary Edwards, Esquire, Attorney General of the State of New Jersey
Board of Chosen Freeholders of the County of Monmouth
Board of Chosen Freeholders of the County of Ocean
Board of Chosen Freeholders of the County of Atlantic
Board of Chosen Freeholders of the County of Cape May
Paul Schneider, Esquire, New Jersey Department of Justice, Division of Law
Robert Dennis, M.D., Save Our Shores

bc: Warren L. Dennis, Esquire
Robert B. McKinstry, Jr., Esquire
Ms. Toral Patel

Exhibit B: Suggested Revisions to Senate Bill No. 1751

D38168

REVISIONS TO SENATE BILL NO. 1751
SUGGESTED BY SAVE OUR SHORES

(Deletions In Brackets And Additions Underscored.)

SHORT TITLE

SECTION 1. This Act may be cited as the "Shore Protection Act of 1987."

TITLE I -- VESSEL IDENTIFICATION

DEFINITIONS

SEC. 101. As used in this Act, the term --

(1) "Administrator" means the Administrator of the Environmental Protection Agency, unless indicated otherwise.

(2) The term "manifest" means the form used in identifying the quantity, general composition, origin, routing and destination of the waste.

(3) "municipal or commercial wastes" includes all "solid waste"[s covered by Subtitle D of] as defined in the Solid Waste Disposal Act. [This shall include any garbage, refuse, or other discarded material.]

(4) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(5) "Secretary" means the Secretary of the department in which the Coast Guard is operating, unless indicated otherwise.

(6) "type of waste" should describe whether the waste is municipal garbage, commercial waste or other types of waste.

(7) "United States" includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands of the United States, American Samoa, Guam and Northern Mariana Islands.

(8) "vessel" refers to any commercial or municipal vessel used for the transport of waste, dredged material, sand, gravel or debris of any kind. This specifically includes any vessel used for towing another vessel that contains the garbage.

(9) "vessel operator" describes the person primarily responsible for the operation of the vessel.

(10) "Waste disposal facility" means the facility where waste is to be removed from the vessel.

[(10)] (11) "waste source" describes the location by title and address of operation where the waste material was loaded on to the vessel.

[(11)] (12) "waters under the jurisdiction of the United States" means --

(A) the waters of the United States, including the territorial sea, and

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of the territorial sea, and the outer boundary is a line drawn in such a manner that each point on it is two hundred nautical miles from the baseline from which the territorial sea is measured.

VESSEL AND FACILITY IDENTIFICATION NUMBERS

SEC. 102. (a) No vessel may be used by any person to carry any type of [Subtitle D] municipal or commercial waste for any purpose within the waters under the jurisdiction of the United States without first obtaining a vessel identification number for that vessel from the [Environmental Protection Agency] Administrator.

(b) An application for the vessel identification number required by subsection (a) shall contain the following information:

(1) the name, address and telephone number of the vessel owner(s) and operator;

(2) the vessel's name and registration number;

(3) the vessel's primary port and marina;

(4) the vessel's transport capacity;

(5) a history of the types of cargo carried by that vessel during the previous year;

(6) a [signed] certification that all of the provided information is accurate signed by the vessel owner.

[(c) The permit must be renewed at least every five years and at any time that the vessel changes ownership. No new owner may operate the vessel using the permit filed by the previous owner.]

[(d)] (c) [EPA] The Administrator is authorized to collect up to $1,000 from the vessel owner[/operator] to cover the issuance and maintenance of vessel identification numbers and to record shipment transactions by maintaining records of the vessel's manifests.

[(e)] (d) Ninety [One hundred and eighty] days after enactment, no vessel may carry municipal or commercial wastes unless a [permit] vessel identification number has been obtained for that vessel [at least 30 days] before the transport of such wastes takes place.

Sec. 103. (a) No waste disposal facility within the jurisdiction of the United States may be used by any person to unload any type of municipal or commercial waste for any purpose from any vessel without first obtaining a waste disposal facility identification number from the Administrator.

(b) An application for the waste disposal facility identification number required by subsection (a) shall contain the following information:

(1) the name, address and telephone number of the waste disposal facility's owner(s) and operator;

(2) the waste disposal facility's address;

(3) a description of the waste disposal facility's activities, including whether it serves only as an unloading point for vessels carrying waste or if it also treats, stores or disposes of the waste;

(4) the approximate amount of waste received by the waste disposal facility each week; and

(5) a certification that all of the provided information is accurate signed by the waste disposal facility's operator.

(c) The Administrator is authorized to collect up to $1,000 from each waste disposal facility operator to cover the issuance and maintenance of waste disposal facility identification numbers and to record waste receipt transactions by maintaining records of transport manifests.

(d) Ninety days after enactment, no waste disposal facility may receive municipal or commercial waste unless a waste disposal facility identification number has been obtained for that facility before the receipt of such waste takes place.

SEC. 104. (a) No waste source facility within the jurisdiction of the United States may be used by any person to load any municipal or commercial waste for any purpose onto any vessel without first obtaining a waste source facility identification number from the Administrator.

(b) An application for the waste source facility identification number required by subsection (a) shall contain the following information:

(1) the name, address and telephone number of the waste source facility's owner(s) and operator;

(2) the address of the waste source facility;

(3) a description of the waste source facility's activities, including the extent to which it generates, treats, stores or disposes of the waste that it loads onto the vessel;

(4) the approximate amount of waste generated and loaded at the waste source facility each week; and

(5) a certification that all of the information provided is accurate signed by the waste source facility's operator.

(c) The Administrator is authorized to collect up to $1,000 from each waste source facility operator to cover the issuance and maintenance of waste source facility identification numbers and to record waste loading transactions by maintaining records of transport manifests.

(d) Ninety days after enactment, no waste source facility may load municipal or commercial waste onto a vessel unless a waste source facility identification number has been obtained for that facility before the loading of such waste takes place.

SEC. 105 [103]. The [Environmental Protection Agency] Administrator shall issue identification numbers [permits] defined under Sections 102[(a)], 103 and 104 within [thirty] ten days after receiving a complete application.

PERMITS FOR WASTE TRANSPORT

SEC. 106. (a) Not later than six months from the enactment of this Act, the Administrator shall promulgate and issue regulations requiring each vessel operator to have a permit pursuant to this section. Not later than eighteen months from enactment of this Act, the transport of any municipal or commercial waste for any purpose will be prohibited within the waters under the jurisdiction of the United States without such a permit.

(b) Each application for a permit under this section shall contain the vessel identification number of the applicant and such information as may be required under regulations promulgated by the Administrator.

(c) The permit shall expire five years following its issuance or at such time as the owner or the operator of the vessel changes, whichever comes first. The permit must be reissued at least every five years and at any time the vessel changes ownership or operators. No new owner or operator may own or operate the vessel using the permit filed by the previous owner or operator.

(d) The Administrator is authorized to collect an appropriate application fee for the issuance and reissuance of permits under this section.

(e) The Administrator shall issue a permit under this section only if the applicant demonstrates that the vessel and its proposed methods of operations do not pose a substantial risk of deposition of commercial or municipal waste into waters under the jurisdiction of the United States in light of the waste to be transported and the waste source and disposal facilities to be served.

(f) The Administrator shall not issue a permit for any vessel if an owner or operator of that vessel or any partner, associate, officer, parent corporation, subsidiary corporations, contractor, subcontractor, or agent of an owner or operator of that vessel has engaged in any violation of this Act or of any other statute of the United States or a state designed to protect the environment or the public health unless that violation has been corrected.

(g) The Administrator may deny, suspend, modify, or revoke any permit issued under this section if the Administrator finds that an owner or operator of a vessel which is the subject of the permit or any partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor, or agent of an owner or operator of that vessel has, through violations of this Act or any other statute of the United States or a state designed to protect the environment or the public health, has demonstrated a lack of ability or intention to comply with this Act. In the case of a corporate owner or operator, the Administrator may consider violations of corporations one of whose principals is a principal of the corporate owner or operator to be a violation of the owner or operator for purposes of this paragraph.

TITLE II -- WASTE TRACKING SYSTEM

WASTE MANIFEST

SEC. 201.(a) [A manifest must be completed for all subtitle D municipal or commercial wastes transported by vessel.] Each vessel owner or operator wishing to transport a cargo consisting of or including municipal or commercial waste must complete a manifest for each such cargo to be transported on that owner's or operator's vessel.

(b) This manifest shall include:

(1) wastes source,

(2) volume of the waste at loading;

(3) general type of waste;

(4) waste destination;

(5) volume of the waste ultimately deposited at the disposal facility;

(6) a description of the vessel's expected course between the waste source and the waste disposal facility;

(7) the expected date of delivery of the waste at the waste disposal facility;

[(6)] (8) signature lines for the operator of the vessel, the operators of the waste source and waste disposal facilities;

[(7)] (9) vessel identification number;

[(8)](10) description of waste containment measures; and

[(9)](11) such other information as the Administrator shall deem necessary.

(c) The [owner/] operator of the vessel is required [to] --

(1) to complete, to sign and to date the manifest form on the date loading of the waste is completed;

(2) to provide one copy of the manifest to the waste source operator, to provide one copy of the manifest as completed at the time of loading to the Environmental Protection Agency regional office for the region of the waste source facility, and to carry four [two] copies with the waste during transport [and provide one of those remaining copies to the operator of the waste receiving facility];

(3) to certify on the manifest the delivery of the wastes to the waste disposal facility[,] and the accuracy of all information on the form; [and]

(4) to obtain the certification of the waste disposal facility operator called for by paragraph (d)(1) of this section;

(5) to provide one copy of the completed manifest to (i) the Environmental Protection Agency regional office for the region of the waste source facility, (ii) the waste disposal facility operator, and (iii) the waste source facility operator; and

[(4)] (6) to retain [return] one completed copy of the manifest form [to the Environmental Protection Agency regional office] for a period of three years;

(d) The [owner/] operator of the disposal facility is required [to]:

(1) to certify that the information on the manifest regarding the type and amount of waste received at the waste disposal facility is accurate; and

(2) to retain a [return the second] copy of the manifest [for all wastes received at the disposal site on a weekly basis to the Environmental Protection Agency regional office] for a period of three years.

(e) The [owner/] operator of the waste source facility is required [to]:

(1) to certify that the information on the manifest regarding the type and amount of waste removed from the waste source is accurate;

(2) to return the completed [third] copies [copy] of the manifests for all shipped wastes [on a weekly basis] to the Environmental Protection Agency regional office for the region of the waste source facility on a weekly basis[.];

(3) to report to the Environmental Protection Agency regional office for the region of the waste source facility any discrepancy on the manifest between the amount of waste removed from the waste source facility and loaded onto the vessel and the amount unloaded from the vessel at the waste

disposal facility or the failure of a completed manifest to be returned by the vessel operator within twenty days of the expected delivery date as set out on the manifest; and

(4) to retain a copy of the manifest at the time of loading and the completed manifest for a period of three years.

TITLE III -- WASTE HANDLING PRACTICES

SEC. 301. (a) The owner[/] and the operator of the waste source facility shall ensure that all waste material is loaded onto the vessel and that no [debris] municipal or commercial waste is deposited in the water.

(b) The vessel owner [/] and the operator shall ensure that all material loaded onto the vessel is properly secured by netting or other means which will ensure that [the] no municipal or commercial waste will [not] be deposited into the water during the unloading operations or during [interment into the landfill] subsequent transportation, treatment, storage, or disposal.

(c) The disposal facility owner[/] and operator shall ensure that all waste material is offloaded in a manner which ensures that no [debris] municipal or commercial waste is deposited into the water during the unloading operations or during [interment into the landfill] subsequent transportation, treatment, storage, or disposal.

(d) The loading and unloading facilities are required to provide adequate control measures to collect any material that is [accidentally] deposited into the water.

(e) The vessel owner and operator, the operator of the waste source and the operator of the waste disposal facility shall be responsible for keeping records of any deposition of municipal or commercial waste into waters under the jurisdiction of the United States, including records of the approximate time and date of the deposition, the location of the deposition, the type of waste and approximate amount of waste deposition. They must make such records available to the Administrator or any other Federal department, agency or other instrumentality of the United States conducting investigations into such spills.

TITLE IV -- ENFORCEMENT

SEC. 401.(a) It shall be the responsibility of each Federal department, agency, or other instrumentality of the United States to assist in the administration of this Act, including the reporting of violations to [EPA] the Administrator and conducting investigation with respect thereto, including the United States Coast Guard, National Oceanic and Atmospheric Administration, Department of Interior, and Environmental Protection Agency.

(b) The Administrator shall have the power to order any person to comply with the provisions of this Act. Any failure to comply with such an order shall itself constitute a violation of the Act.

CIVIL AND ADMINISTRATIVE PENALTIES

SEC. 402.(a) [Effective one hundred and twenty days after enactment,] Any person who violates any section of this Act shall be liable to the United States for a civil penalty. The Secretary of the Department in which the Coast Guard is operating, the Secretary, the Secretary of Commerce or the Administrator may assess penalties for violations of Title I, II, [or] III, or IV. Up to one half of such penalties may be paid to the person or persons giving information leading to the assessment of such penalties.

(b) The Administrator or the Secretary may assess a penalty of up to [$5,000] $25,000 for any violation of Section 102. [This penalty may be doubled for second violations.] Each day the vessel transports municipal and commercial waste without a vessel identification number shall constitute a separate violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(c) The Administrator or the Secretary may assess a penalty of up to $25,000 for any violation of Sections 103 or 104. Each day that a waste source facility or waste disposal facility operates without a waste source facility or waste disposal facility identification number shall constitute a separate violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(d) The Administrator or the Secretary may assess fines up to $25,000 for violations of Section 106. Each day that a vessel operates in violation of the permit provisions of Section 106 shall constitute a separate violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, or hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

[(c)] (e) The Administrator or the Secretary may assess penalties up to [$5,000] $25,000 for violations of section 201 (a), (b) and (c). [This penalty may be doubled for the second violation.] Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

[(d)] (f) The Administrator or the Secretary may assess penalties of up to [$2,000] $25,000 for each violation of section 201 (d) or (e). [This penalty may be doubled for the second violation, tripled for the third violation, and quadrupled for the fourth violation.] Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

[(e)] (g) The Administrator or the Secretary may assess penalties of up to [$5,000] $25,000 for any single violation of titles III or IV. [This penalty may be doubled for the second violation, tripled for the third violation.] Each day of a continuing violation of title III or IV shall be considered a separate violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United

States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(f) [(h)] The Administrator has the power to revoke the vessel identification number in any instance where egregious or multiple violations have taken place. Before such action becomes final, the vessel owner must be given thirty days notice and opportunity for a hearing. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide reasonable opportunity to be heard and present evidence.

[(g)] (i) In the case of persistent violators, a facility or operator with five or more separate violations within a six month period, [EPA] the Administrator is directed to conduct an investigation of the facility or operator. This shall not be construed to limit EPA's ability to investigate or to revoke vessel identification numbers in instances where egregious violations have taken place. Once [such] an investigation is completed, [EPA] the Administrator may [file] bring suit in a [federal] district court for a district in which the violator may be found to collect civil penalties up to $25,000 per violation, to prevent further operation of the facility, and/or other equitable relief.

[(h)] (j) In determining the amount of a civil penalty, the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, effect on ability to continue business, the economic benefit resulting from such violation, any history of prior violations, the degree of culpability, and such other matters as justice may require shall be taken into account.

[(i)] (k) Any civil penalty which may be imposed under this section, may be compromised, modified, or remitted, with or without conditions. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the United States to the person charged.

[(j)] (l) Any person who requested a hearing respecting the assessment of a civil penalty may file a [notice of appeal] petition for review, in the United States District Court for the District of Columbia, or in the district in which the violations are alleged to have occurred. Such notice may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. Such notice must also simultaneously be filed with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, or the Administrator, as the case may be, and the Attorney General.

[(k)] (m) If any person fails to pay an assessment of a civil penalty --

(1) after the order making the assessment has become a final order and if such person does not file for judicial review of the order in accordance with subsection [(j)] (l) of this section, or

(2) after a court in an action brought under subsection [(j)] (l) has entered a final judgment in favor of the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, the Secretary of the Interior, or the Administrator, the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates) from the date of the expiration of the thirty-day period referred to in subsection [(j)] (l) or the date of such final judgment, as the case may be, in an action brought in any appropriate district court of the United States. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

CITIZEN SUITS

SEC. 403. (a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf --

(1) against any person (including (i) the United States and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement of this Act or any order issued pursuant to this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. The district courts shall have jurisdiction, without regard to

the amount in controversy or the citizenship of the parties, to enforce any provisions of Titles I, II, or III or any order of the Administrator under this Act, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 402 of this title.

(b) No action may be commenced --

(1) under subsection (a)(1) of this section --

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the state in which the alleged violation occurs, and (iii) to any alleged violator of the requirement, or order, or

(B) if the Administrator or state has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a state to require compliance with the requirement or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; Intervention by Administrator.

(1) An action may be brought under subsection (a)(1) of this section only in the judicial district in which the violation occurred.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Litigation costs.

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement or order or to seek any other relief (including relief against the Administrator or a State agency).

(f) Citizen.

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(g) Civil action by State Governors.

A governor of a state may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is an alleged failure of the Administrator to enforce a provision under this Act the violation of which is occurring in another state and is causing an adverse effect on the public health or welfare of his State.

CRIMINAL PENALTIES

SEC. 404 [403] (a) Effective six months after enactment, any person that shall willfully and knowingly violate, or that shall willfully and knowingly aid, abet, authorize, or instigate a violation of title I, II, III, or IV upon conviction for such violation, in addition to or in lieu of any civil penalty that may be imposed under section 402 [104], shall be fined not more than [$50,000] $250,000 or imprisoned not more than three years, or both. In the discretion of the court, up to one-half of such fine may be paid to the person or persons giving information leading to conviction.

(b) False Statements -- Any person who knowingly makes any material false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

(c) For the purpose of this section, the term "person" means, in addition to the definition contained in section 101(4) of this Act, any responsible corporate officer.

[(b)] (d) The United States Sentencing Commission in establishing guidelines for sentences under this section shall take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violation, ability to pay, effect on ability to continue business, economic benefit resulting from such violation, any history of prior violations, the degree of culpability, and such other matters as justice may require.

[(c)] (e) This section shall be carried out with respect to foreign ships consistent with the obligations of the United States under international law.

[(d)] (f) Courts shall not apply the penalty of imprisonment in this section to United States ships for acts for which such a penalty cannot be imposed on foreign ships consistent with the obligations of the United States under international law.

PRESUMPTION OF VIOLATION

SEC. 405. (a) In any civil action under this Act, a presumption shall arise that particular waste was deposited into water during loading, transportation, or unloading of a particular vessel upon a showing by a preponderance of the evidence that:

(1) more than twenty days following the delivery date set out on a manifest the completed manifest for a shipment of a municipal or commercial waste on the vessel has not been provided to the Environmental Protection Agency regional office for the region of the waste source facility reflecting off-loading of the same volume and type waste as the manifest at the time of loading;

(2) the waste unaccounted for is similar in type to the waste assertedly deposited in water; and

(3) the winds, tides, and currents at relevant times and locations were not inconsistent with the deposition of the waste assertedly deposited from the vessel at a location where the vessel actually was at the asserted time of deposition or reasonably could have been at the time of deposition based upon the course set out on the manifest at the time of loading.

(b) A party against whom such a presumption shall arise shall have the burden of rebutting that presumption by a preponderance of the evidence.

LIABILITY

SEC. 406. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section, the owner and operator of a vessel, and its waste source facility from which vessel there is a deposition of waste into water which causes the incurrence of response costs shall be liable for:

(1) all costs of removal or remedial action incurred by the United States or a state or an Indian tribe;

(2) any other necessary costs of response incurred by any other person; and

(3) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a deposition into water.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (1) through (2). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the depositions into water and the damages resulting therefrom were caused solely by --

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the municipal or commercial waste concerned, taking into consideration the characteristics of such waste, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) If any person who is liable for a deposition into water fails without sufficient cause properly to provide removal or remedial action upon order of the Administrator pursuant to section 401(b) of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the United States or any other person as a result of such failure to take proper action. The Administrator is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to this section. Any money recovered by the United States pursuant to this section shall be retained by the Administrator, and allocated to enforcement expenses under this Act.

(d) (1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a deposition of waste under this section, to any other person the liability imposed under this section. Nothing in this section shall bar any agreement to insure, to hold harmless, or to indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(e) Any Federal department or agency, state, municipality or individual incurring such costs may bring an action against the violator under this section in the district court for the district in which the costs were incurred, without regard to the amount in controversy.

(f) In addition to the parties made liable by paragraph (a) of this section, the owner and operator of a waste disposal facility shall be liable under the same terms and subject to the same defenses for any deposition into water during off-loading of municipal or commercial waste or the waste's subsequent transportation, treatment, storage, or disposal.

(g) For purposes of this section "response costs" shall mean all necessary and reasonable costs incurred in investigating and remediating a deposition of municipal or commercial waste into water or that deposition's effects on public health or the environment.

GOVERNMENTAL LIENS

SEC. 407. (a). All costs and damages for which a vessel owner or operator is liable to any governmental entity (which shall include any agency or department of the Federal government, any agency or department of the several states and any municipality) under section 406 shall constitute a lien in favor of that governmental entity upon all real property, rights to such property and revenues of such person.

(b) The lien imposed under subsection (a) shall constitute a first priority claim and lien in favor of the governmental entity and shall be paramount to all other claims upon the revenues and all real and personal property of the vessel owner or operator, whether or not the vessel owner or operator is insolvent.

(c) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the property or revenues are located.

(d) All costs and damages for which the owner or operator of a vessel is liable to a governmental entity under section 406 shall constitute a maritime lien on the vessel in favor of the governmental entity. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found.

TITLE V -- EPA RESPONSIBILITIES AND POWERS

SEC. 501. The Administrator shall have the following responsibilities:

(a) The Administrator shall propose and make available for comment the manifest form, including all of the items specified in Section 201(a), within [forty-five] thirty days after enactment.

(b) The Administrator is required to propose and to make available for comment an application form for the vessel identification number including all of the elements specified in Section 101(a) within thirty days.

(c) The Administrator [must] shall make both the manifest and the vessel identification number [permit] applications publicly available within [sixty] thirty days after completion of the comment period.

(d) The Administrator is required to issue or to deny [permits] vessel identification numbers, waste source facility identification numbers, and waste disposal facility identification numbers for all applicants within [thirty] ten days of application. [EPA must also] The Administrator shall maintain a record of all [permits] vessel identification numbers, waste source facility and waste disposal facility identification numbers.

(e) Within [one hundred eighty] ninety days of enactment, the Administrator must establish a system to maintain [permit] identification number records and permit records, receive the completed manifests and ensure that the waste volume loaded for transport corresponds with the waste volume ultimately disposed of at the disposal facility.

SEC. 502. The Administrator shall have the following powers:

(a) The Administrator shall have the power to assess civil penalties for violations of Titles I, II, III or IV and to bring actions to recover such penalties against violators in accordance with Section 402.

(b) The Administrator shall have the power to investigate violations of titles I,II, III or IV.

(c) The Administrator shall have the power to order individuals to comply with the provisions of this Act and to enforce such orders in the district court.

(d) The Administrator may promulgate regulations implementing this Act.

TITLE VI -- TRACKING STUDY

SEC. 601. (a) Within eighteen months of enactment, the Administrator is required to undertake a study to determine the effectiveness of additional tracking systems for vessels to ensure that [nonhazardous] municipal and commercial waste is not disposed of at sea or in coastal waters. In conducting this study, EPA will use the data completed under Section 201[(d) and (e)]. The report must make a recommendation on whether additional tracking mechanisms are needed. This study shall be completed within 24 months after enactment.

(b) Within 18 months of enactment the Secretary shall undertake a study of the various tracking systems that might be applicable to vessels carrying nonhazardous municipal or commercial waste. The study shall consider the relative effectiveness of various systems and the relative costs of the systems both to the federal government and to the vessel owner. Within 24 hours, the Secretary shall have completed this study.

TITLE VII -- COAST GUARD RESPONSIBILITIES

SEC. 701 (a) The Secretary shall ensure that periodic checks are made of vessels operating under this Act transporting [garbage], municipal [waste,] and commercial wastes to determine that each of these vessels has an appropriate identification number and carries the appropriate permit [as described in Section 102(b)] and the manifest required by Section 201(a).

(b) The Secretary shall ensure that any vessel seen leaving coastal waters carrying municipal or commercial waste is in compliance with the provisions of this Act, the Marine Protection, Research and Sanctuaries Act, the 1899 Refuse Act, the Clean Water Act and the Solid Waste Disposal Act.

(c) Any discrepancies found by the Coast Guard in the vessel's permit or manifest shall be report to [EPA] the Administrator for potential enforcement action.

(d) Should the Administrator determine that tracking devices or satellite surveillance [is] are required to ensure adequate enforcement of laws preventing coastal or ocean dumping, the Secretary shall issue regulations to require installation of the appropriate devices within 18 months after [EPA] the Administrator completes [its] his report under Section 601.

TITLE VIII -- RELATION TO OTHER LAWS

SEC. 801. (a) Nothing in this Act may be interpreted or construed to supersede or to preempt any other provisions of Federal or State law.

(b) Nothing in this Act shall be construed or interpreted as preempting any state from imposing any additional requirements.

(c) Nothing in this Act shall affect or otherwise impair the rights or obligations of any person under Federal[,] or state[, or common] law.

TITLE IX -- AUTHORIZATION

SEC. 901. There are authorized such funds as may be necessary to support the provisions of this bill.

TITLE X -- SAVINGS CLAUSE

This Act does not preclude action by any person, state or local authority against transfer stations, waste generators, waste disposal facilities or waste transporters for violations of this Act.

II

100TH CONGRESS
1ST SESSION

S. 1751

To require vessels to manifest the transport of municipal or other nonhazardous commercial wastes transported offshore to ensure that these wastes are not illegally disposed of at sea.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2 (legislative day, SEPTEMBER 25), 1987

Mr. LAUTENBERG (for himself and Mr. BRADLEY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To require vessels to manifest the transport of municipal or other nonhazardous commercial wastes transported offshore to ensure that these wastes are not illegally disposed of at sea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Shore Protection Act of 1987".

TITLE I—VESSEL IDENTIFICATION

DEFINITIONS

SEC. 101. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency, unless indicated otherwise.

(2) The term "manifest" means the form used in identifying the quantity, general composition, origin, routing and destination of the waste.

(3) "municipal or commercial wastes" includes all wastes covered by subtitle D of the Solid Waste Disposal Act. This shall include any garbage, refuse, or other discarded material.

(4) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(5) "Secretary" means the Secretary of the department in which the Coast Guard is operating, unless indicated otherwise.

(6) "type of waste" should describe whether the waste is municipal garbage, commercial waste or other type of waste.

(7) "United States" includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(8) "vessel" refers to any commercial or municipal vessel used for the transport of waste, dredged material, sand, gravel, or debris of any kind. This specifically includes any vessel used for towing another vessel that contains the garbage.

(9) "vessel operator" describes the person primarily responsible for the operation of the vessel.

(10) "waste source" describes the location by title and address, of operation where the waste material was loaded onto the vessel.

(11) "waters under the jurisdiction of the United States" means—

(A) the waters of the United States, including the territorial sea, and

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of the territorial sea, and the outer boundary is a line drawn in such a manner that each point on it is two hundred nautical miles from the baseline from which the territorial sea is measured.

VESSEL IDENTIFICATION NUMBERS

SEC. 102. (A) No vessel may be used by any person to carry any type of subtitle D municipal or commercial waste for any purpose within the waters under the jurisdiction of the United States without first obtaining a vessel identification number for that vessel from the Environmental Protection Agency.

(b) Application for the vessel identification number required by subsection (a) shall contain the following information:

(1) the name, address and phone number of the vessel owner(s);

(2) the vessel's name and registration number;

(3) the vessel's primary port and marina;

(4) the vessel's transport capacity.

(5) a history of the types of cargo carried by that vessel during the previous year.

(6) signed certification that all of the provided information is accurate by the vessel owner.

(c) The permit must be renewed at least every five years and at any time that the vessel changes ownership. No new owner may operate the vessel using the permit filed by the previous owner.

(d) EPA is authorized to collect up to $1,000 from the vessel owner/operator to cover the issuance and maintenance of vessel identification numbers and to record shipment transactions by maintaining records of the vessel's manifests.

(d) One hundred eighty days after enactment no vessel may carry municipal or commercial wastes unless a permit has been obtained for that vessel at least thirty days before the transport of such wastes takes place.

SEC. 103. The Environmental Protection Agency shall issue permits defined under section 102(a) within thirty days after receiving a complete application.

TITLE II—WASTE TRACKING SYSTEM

WASTE MANIFEST

SEC. 201. (a) A manifest must be completed for all subtitle D municipal or commercial wastes transported by vessel.

(b) This manifest shall include—

(1) wastes source;

(2) volume of the waste at loading;

(3) general type of waste;

(4) waste destination;

(5) volume of the waste ultimately deposited at the disposal facility;

(6) signature lines for the owner/operator of the vessel, the waste source and waste disposal facilities;

(7) vessel identification number;

(8) description of waste containment measures; and

(9) such other information as the administrator shall deem necessary.

(c) The owner/operator of the vessel is required to—

(1) complete, sign and date the manifest form;

(2) provide one copy to the waste source operator, carry two copies with the waste during transport and provide one of those remaining copies to the operator of the waste receiving facility;

(3) certify the delivery of the wastes to the waste disposal facility, the accuracy of all information on the form; and

(4) return one completed copy of the manifest form to the Environmental Protection Agency regional office.

(d) The owner/operator of the disposal facility is required to return the second copy of the manifest for all wastes received at the disposal site on a weekly basis to the Environmental Protection Agency regional office.

(e) The owner/operator of the waste source facility is required to return the third copy of the manifest for all shipped wastes on a weekly basis to the Environmental Protection Agency regional office.

TITLE III—WASTE HANDLING PRACTICES

SEC. 301. (a) The owner/operator of the waste source facility shall ensure that all waste material is loaded onto the vessel and that no debris is deposited in the water.

(b) The vessel owner/operator shall ensure that all material loaded onto the vessel is properly secured by netting or other means which will ensure that the waste will not be deposited into the water during transport.

(c) The disposal facility owner/operator shall ensure that all waste material is offloaded in a manner which ensures that no debris is deposited into the water during the unloading operations or during interment into the landfill.

(d) The loading and unloading facilities are required to provide adequate control measures to collect any material that is accidentally deposited into the water.

TITLE IV—ENFORCEMENT

SEC. 401. It shall be the responsibility of each Federal department, agency, or other instrumentality of the United States to assist in the administration of this Act, including the reporting of violations to EPA and conducting investigation with respect thereto, including the United States Coast Guard, National Oceanic and Atmospheric Administration, Department of Interior, and Environmental Protection Agency.

CIVIL PENALTIES

SEC. 402. (a) Effective one hundred and twenty days after enactment, any person who violates any section of this Act shall be liable to the United States for a civil penalty. The Secretary of the Department in which the Coast Guard is operating, the Secretary, the Secretary of Commerce or the Administrator may assess penalties for violations of title I, II or III. Up to one half of such penalties may be paid to the person or persons giving information leading to the assessment of such penalties.

(b) The Administrator or the Secretary may assess a penalty of up to $5,000 for any violation of section 102. This penalty may be doubled for second violations. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(c) The Administrator or the Secretary may assess fines up to $5,000 for violations of section 201 (a), (b), and (c). This penalty may be doubled for the second violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(d) The Administrator or the Secretary may assess penalties of up to $2,000 for each violation of section 201 (d) or (e). This penalty may be doubled for the second violation, tripled for the third violation, and quadrupled for the fourth violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(e) The Administrator or the Secretary may assess penalties of up to $5,000 for any single violation of title III. This penalty may be doubled for the second violation. Before issuing an order assessing a penalty, the person assessed such penalty must be given written notice of the proposal to issue such order and the opportunity to request, within thirty days of the date such notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(f) The Administrator has the power to revoke the vessel identification number in any instance where egregious or multiple violations have taken place. Before such action becomes final, the vessel owner must be given thirty days notice and opportunity for a hearing. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide reasonable opportunity to be heard and present evidence.

(g) In the case of persistent violators, a facility or operator with five or more separate violations within a six month period, EPA is directed to conduct an investigation of the facility or operator. This shall not be construed by limit EPA's ability to investigate or revoke vessel identification numbers in instances where egregious violations have taken place. Once such investigation is completed EPA may file suit in a Federal court to collect civil penalties up to $25,000 per violation, to prevent further operation of the facility, and/or other equitable relief.

(h) In determining the amount of a civil penalty, the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, effect on ability to continue business, the economic benefit resulting from such violation, any history of prior violations the degree of culpability, and such other matters as justice may require shall be taken into account.

(i) Any civil penalty which may be imposed under this section, may be compromised, modified, or remitted, with or without conditions. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owned by the United States to the person charged.

(j) Any person who requested a hearing respecting the assessment of a civil penalty may file a notice of appeal, in the United States District Court for the District of Columbia, or in the district in which the violations are alleged to have occurred. Such notice may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. Such notice must also simultaneously be filed with the Secretary of Interior, the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, or the Administrator, as the case may be, and the Attorney General.

(k) If any person fails to pay an assessment of a civil penalty—

(1) after the order making the assessment has become a final order and if such person does not file for judicial review of the order in accordance with subsection (j) of this section, or

(2) after a court in an action brought under subsection (j) has entered a final judgment in favor of the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, the Secretary of Interior, or the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates) from the date of the expiration of the thirty-day period referred to in subsection (j) or the date of such final judgment, as the case may be, in an action brought in any appropriate district court of the United States. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

CRIMINAL PENALTIES

SEC. 403. (a) Effective six months after enactment, any person that shall willfully and knowingly violate, or that shall willfully and knowingly aid, abet, authorize, or instigate a violation of title I, II or III, upon conviction for such violation, in addition to or in lieu of any civil penalty that may be imposed under section 104, shall be fined not more than $50,000 or imprisoned for not more than three years, or both. In the discretion of the court, up to one-half of such fine may be paid to the person or persons giving information leading to conviction.

(b) The United States Sentencing Commission in establishing guidelines for sentences under this section shall take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, effect on ability to continue business, economic benefit resulting from such violation, any history of prior violations, the degree of culpability, and such other matters as justice may require.

(c) This section shall be carried out with respect to foreign ships consistent with the obligations of the United States under international law.

(d) Courts shall not apply the penalty of imprisonment in this section to United States ships for acts for which such a penalty cannot be imposed on foreign ships consistent with the obligations of the United States under international law.

TITLE V—EPA RESPONSIBILITIES

SEC. 501. (a) The Administrator shall propose and make available for comment the manifest form, including all of the items specified in section 201(a), within forty-five days after enactment.

(b) The Administrator is required to propose and make available for comment an application form for the vessel identification number including all of the elements specified in section 101(a) within thirty days.

(c) The Administrator must make both the manifest and the permit applications publicly available within sixty days after completion of the comment period.

(d) The Administrator is required to issue or deny permits for all applicants within thirty days of application. EPA must also maintain a record of all permits.

(e) Within one hundred eighty days of enactment, the Administrator must establish a system to maintain permit records, receive the completed manifests and ensure that the waste volume loaded for transport corresponds with the waste volume ultimately disposed of at the disposal facility.

TITLE VI—TRACKING STUDY

SEC. 601. (a) Within eighteen months of enactment, the Administrator is required to undertake a study to determine the effectiveness of additional tracking systems for vessels to ensure that nonhazardous municipal and commercial waste is not disposed of at sea or in coastal waters. In conducting this study, EPA will use the data collected from its permitting activities and from the data completed under section 201 (d) and (e). The report must make a recommendation on whether additional tracking mechanisms are needed. This study shall be completed within twenty-four months after enactment.

(b) Within eighteen months of enactment the Secretary shall undertake a study of the various tracking systems that might be applicable to vessels carrying nonhazardous municipal or commercial waste. The study shall consider the relative effectiveness of various systems and the relative costs of the systems both to the Federal Government and to the vessel owner. Within twenty-four months, the Secretary shall have completed this study.

TITLE VII—COAST GUARD RESPONSIBILITIES

SEC. 701. (a) The Secretary shall ensure that periodic checks are made of vessels operating under this Act transporting garbage, municipal waste, and commercial wastes to determine that each of these vessels carries the appropriate permit as described in section 102(b) and the manifest required by section 201(a).

(b) The Secretary shall ensure that any vessel seen leaving coastal waters carrying municipal or commercial waste is in compliance with the provisions of this Act, the Marine Protection, Research and Sanctuaries Act, the 1899 Refuse Act, the Clean Water Act, and the Solid Waste Disposal Act.

(c) Any discrepancies found by the Coast Guard in the vessels' permit or manifest shall be reported to EPA for potential enforcement action.

(d) Should the Administrator determine that tracking devices or satellite surveillance is required to ensure adequate enforcement of laws preventing coastal or ocean dumping, the Secretary shall issue regulations to require installation of the appropriate devices within eighteen months after EPA completes its report.

TITLE VIII—RELATION TO OTHER LAWS

SEC. 801. (a) Nothing in this Act may be interpreted or construed to supersede or preempt any other provisions of Federal or State law.

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This Act does not preclude action by any person, State or local authority against transfer station, waste generators, waste disposal facilities or waste transporters for violations of this Act.